

GST UPDATE



GST Provisions on Online Information and Database Access or Retrieval (OIDAR) Services

Meaning:-

Section 2(17) of IGST Act states as follows—

"Online information and database access or retrieval services" (OIDAR service) means "services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services."

In simple terms, both the following conditions must be satisfied to be an OIDAR service. If one is not satisfied, the service is not OIDAR.

- Delivery is mediated through internet.
- Delivery is not to be understood as simultaneous consumption of services. Illustratively, delivery means making available a service even though actual consumption of services can be later without internet.
- The supply is essentially automated involving minimal human intervention and impossible without information technology.

Examples of OIDAR services:

1. Advertising on internet.
2. Providing cloud services (Google Drive).
3. Provision of e-books, movie, music, software and other intangibles via internet (Hot Star, Amazon Prime Video).
4. Providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network (For Ex: Quora).
5. Online gaming (Steam).

Examples of Non-OIDAR services:

1. Supplies of goods, where the order and processing is done electronically.
2. Supplies of physical books, newsletters, newspapers or journals.

3. Services of lawyers and financial consultants who advise clients through email.
4. Booking services or tickets to entertainment events, hotel accommodation or car hire.
5. Educational or professional courses, where the content is delivered by a teacher over the internet.
6. Offline physical repair services of computer equipment.
7. Advertising services in newspapers, on posters and on television.

NOTE: Using internet itself does not mean it is OIDAR service - Using the internet, or some electronic means of communication, just to communicate or facilitate outcome of service does not always mean that a business is providing OIDAR services - para 12 of CBE&C Circular No. 202/12/2016-ST dated 9-11-2016.

Place of Supply provision:-

- As per Section 13(12) of IGST Act:

Supply	Recipient	Place of supply
Supply of online information and database access or retrieval services	Any person	Location of the recipient of services

- For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory if any two of the following non-contradictory conditions are satisfied, namely:—
- a) Location of address presented by the recipient through internet is in Taxable Territory;
 - b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
 - c) the billing address of the recipient of services is in the taxable territory;

- d) the internet protocol address of the device used by the recipient of services is in the taxable territory;
- e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
- f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
- g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

Location of Supplier of service	Location of recipient of service	Taxability	Forward Charge/ Reverse Charge	Examples
India	India	Yes	Forward Charge	Hot star (registered in India) allows Indian users to register and watch movies. GST is payable by the supplier i.e. Hot Star. C/SGST in case of intrastate supply and IGST and in case of interstate supply would be charged.
Outside India	India Recipient: Registered	Yes	Reverse Charge	An Indian Company (registered) asks Blue Host (US) for web hosting services. GST is payable by the Indian Company under RCM.
	Recipient: Non-Taxable Person	Yes	Forward Charge	A student in India registers in Netflix (US) for watching movies. Netflix has to pay IGST as per section 14(1) of IGST Act 2017.

Registration provisions:-

- The supplier of OIDAR services who is liable to pay IGST as per section 14(1) of GST Act shall, for payment of IGST, take a single registration under a Simplified Registration Scheme notified by Central Government - Section 14(2) of IGST Act. Registration is required to be obtained by filing **GST REG-10**.
- **Notification No. 2/2017 – Integrated tax, dated 19th June 2017** has notified Principal Commissioner of central tax, Bengaluru (west) as designated authority for grant of registration.
- However, where any person located in taxable territory representing such supplier for any purpose, shall take registration and pay IGST on behalf of the supplier- first proviso to Section 14(2) of IGST.
- If such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying IGST and such person shall be liable for paying IGST - second proviso to Section 14(2) of IGST.

Intermediary located outside India liable to pay IGST:-

- If an intermediary located in outside India, arranges or facilitates the supply of OIDAR services, from the service provider to the non-taxable online recipient.

Then, the intermediary will be deemed to be the recipient of such services when receiving such services from non-taxable supplier and be deemed to be supplier of services for non-taxable online recipient.

However, if the intermediary satisfies the following conditions then it will not be considered as a recipient:

- (a) The invoice issued by the intermediary clearly identifies the service and its supplier in non-taxable territory;
- (b) The intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
- (c) The intermediary does not authorize delivery;
- (d) The general terms and conditions of the supply are set by the service provider and not by the intermediary.

Payment by person supplying OIDAR service from out of India:-

- Person supplying OIDAR service from out of India to a non-taxable online recipient may deposit the amount in Electronic Cash Ledger through CBE&C's payment system i.e. Electronic Accounting System in Excise and Service tax from date to be notified - second proviso to Rule 87(2) of CGST and SGST Rules, 2017 inserted w.e.f. 17-8-2017.
- Otherwise, can make payment through Society for Worldwide Interbank Financial Telecommunication payment network from date to be notified - second proviso to Rule 87(3) of CGST and SGST Rules, 2017 inserted w.e.f. 17-8-2017.

Meaning of "non-taxable online recipient":-

"Non-taxable online recipient" means Government, a local authority, a governmental 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 - Section 2(16) of IGST Act.

Reporting provisions:-

Person providing OIDAR service shall file return in form GSTR-5A on or before 20th of succeeding month - Rule 64 of CGST and SGST Rules, 2017.

DISCLAIMER:

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