

Online Information Data Base Access and Retrieval (OIDAR) Services in GST

WHAT IS OIDAR?

Online Information Database Access and Retrieval services (hereinafter referred to as OIDAR) is a category of services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services. E.g. downloading of an e-book online for a payment would amount to receipt of OIDAR services by the consumer downloading the e-book and making payment.

The IGST Act defines OIDAR to mean 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 such as, —

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

WHY OIDAR ISREQUIRES A TREATMENT DIFFERENT FROM OTHER SERVICES?

The nature of OIDAR services are such that it can be provided online from a remote location outside the taxable territory. A similar service provided by an Indian Service Provider, from within the taxable territory, to recipients in India would be taxable. Further, such services received by a registered entity in India would also be taxable under reverse charge. The overseas suppliers of such services would have an unfair tax advantage should the services provided by them be left out of the tax net. At the same time, since the service provider is located overseas and may not be having a presence in India, the compliance

verification mechanism become difficult. It is in such circumstances, that the government has plans to come out with a simplified scheme of registration for such service providers located outside.

HOW WOULD OIDAR SERVICES BE TAXABLE UNDER GST?

For any supply to be taxable under GST, the place of supply in respect of the subject supply should be in India. In case, both the supplier of OIDAR Service and the recipient of such service is in India, the place of supply would be the location of the recipient of service i.e. it would be governed by the default place of supply rules.

What happens in cases where the supplier of service is located outside India and the recipient is located in India. In such cases also the place of supply would be India and the transaction would be amenable to tax.

WHO WILL BE RESPONSIBLE FOR PAYING THE TAX?

In cases where the supplier of such service is located outside India and the recipient is a business entity (registered person) located in India, the reverse charge mechanism would get triggered and the recipient in India who is a registered entity under GST will be liable to pay GST under reverse charge and undertake necessary compliances.

So far so good. Now what happens if the supplier is located outside India and the recipient in India is an

individual consumer. In such cases also the place of supply would be India and the transaction is amenable to levy of GST, but the problem would be, how such tax would be collected. It would be impractical to ask the individual in India to register and undertake the necessary compliances under GST for a one off purchase on the internet.

For such cases the IGST Act provides that on supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the **supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.**

Now if an intermediary located outside India arranges or facilitates supply of such service to a non-taxable online recipient in India, the intermediary would be treated as the supplier of the said service, except when the intermediary satisfies the following conditions.

- (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
- (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that 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 involved in the supply does not authorise delivery; and
- (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

HOW WOULD THE ENTITY LOCATED OUTSIDE INDIA COMPLY WITH THE RESPONSIBILITIES ENTRUSTED UNDER GST?

The supplier (or intermediary) of online information and database access or retrieval services shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme in Form GST REG-10. The supplier shall take registration at Principal Commissioner of Central Tax, Bengaluru West who has been the designated for grant registration in such cases.

In case there is a person in the taxable territory (India) representing such overseas supplier in the taxable territory for any purpose, such person (representative in India) shall get registered and pay integrated tax on behalf of the supplier:

In case the overseas 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 integrated tax and such person shall be liable for payment of such tax.

Who is a Non-Taxable Online Recipient?

“non-taxable online recipient” means any Government, local authority, 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.

The expression “governmental authority” means an authority or a board or any other body, —

- i) set up by an Act of Parliament or a State Legislature;
or
- ii) established by any Government,

with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution

Examples of what could be or could not be OIDAR services

The inclusive part of the definition of OIDAR services are only indicative and not exhaustive. To determine if a particular service is an OIDAR service, the following test can be applied.

Service	Whether Provision of service mediated by information technology over the internet or an electronic network	Whether it is Automated and impossible to ensure in the absence of information technology	OIDAR Service
Pdf document manually emailed by provider	Yes	No	No
Pdf document automatically emailed by provider's system	Yes	Yes	Yes
Pdf document automatically downloaded from site	Yes	Yes	Yes
Stock photographs available for automatic download	Yes	Yes	Yes

Online course consisting of pre-recorded videos and downloadable pdfs	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable pdfs plus support from a live tutor	Yes	No	No
Individually commissioned content sent in digital form e.g., photographs, reports, medical results	Yes	No	No

Indicative List of OIDAR Services

- 1. Website supply, web-hosting, distance maintenance of programmes and equipment;**
 - (a) Website hosting and webpage hosting;
 - (b) automated, online and distance maintenance of programmes;

- (c) remote systems administration;
- (d) online data warehousing where specific data is stored and retrieved electronically;
- (e) online supply of on-demand disc space.

2. Supply of software and updating thereof;

- (a) Accessing or downloading software (including procurement/accountancy programmes and anti-virus software) plus updates;
- (b) software to block banner adverts showing, otherwise known as Banner blockers;
- (c) download drivers, such as software that interfaces computers with peripheral equipment (such as printers);
- (d) online automated installation of filters on websites;
- (e) online automated installation of firewalls.

3. Supply of images, text and information and making available of databases;

- (a) Accessing or downloading desktop themes;
- (b) accessing or downloading photographic or pictorial images or screensavers;
- (c) the digitised content of books and other electronic publications;
- (d) subscription to online newspapers and journals;

- (e) weblogs and website statistics;
 - (f) online news, traffic information and weather reports;
 - (g) online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular such data as continually updated stock market data, in real time);
 - (h) the provision of advertising space including banner ads on a website/web page;
 - (i) use of search engines and Internet directories.
- 4. Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events;**
- (a) Accessing or downloading of music on to computers and mobile phones;
 - (b) accessing or downloading of jingles, excerpts, ringtones, or other sounds;
 - (c) accessing or downloading of films;
 - (d) downloading of games on to computers and mobile phones;
 - (e) accessing automated online games which are dependent on the Internet, or others similar electronic

networks, where players are geographically remote from one another.

(5) Supply of distance teaching.

- (a) Automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student;
- (b) workbooks completed by pupils online and marked automatically, without human intervention,

The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Filing of Returns by a person providing OIDAR service to a non-taxable online recipient in India.

In terms of Rule 64 of CGST Rules, 2017, every registered person providing online information and data base access or retrieval services from a place outside India to a person in India other than a registered person shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.

The Central Government vide notification no.69/2017-Central Tax dated 21.12.2017 has extended the time limit for furnishing the return in FORM GSTR-5A for

the months of July, 2017, August, 2017, September, 2017, October, 2017, November, 2017 and December, 2017 by a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 and rule 64 of the Central Goods and Services Tax Rules, 2017, till the 31st day of January, 2018.

It is to be noted that GSTR-5A is required to be filed only by the service provider (or his representative) providing OIDAR services from outside India to a non-taxable online recipient in India. Other categories of OIDAR service providers (like those supplying OIDAR services from India) will have to file regular returns (GSTR 1, 2, 3/3B) prescribed for general categories of registered persons.
