



Newsflash
GST on OIDAR Services - Recent Amendments

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1.0 Introduction and Context

- 1.1 The taxability of cross-border electronic and digital services has always been a matter of critical importance for companies engaged in these businesses. The tax implications for such businesses vary across geographies and also depend on the type of products being supplied electronically or digitally. Tax heads, CXOs, and Owners of new-age businesses that deliver their products through electronic means need to be on their toes when it comes to updates with respect to such regulations.
- 1.2 India is a very important market for electronically delivered services. With rising internet and mobile penetration and a rising young and tech-savvy demographic, India will continue to be a very important market for both B2B and B2C services which are being delivered electronically or digitally.
- 1.3 In India, Goods and Services Tax is a destination-driven indirect tax reform that was implemented in 2017 and the taxable event is the supply of goods and services. Such supply, inter alia, also includes electronically supplied services.
- 1.4 As per the Indian Goods and Services Tax (GST) Law, the taxability of the supply of cross-border electronic services is dealt with through the concept known as OIDAR Services, which are short for Online information and database access or retrieval services.
- 1.5 OIDAR services originally and prior to 30th September 2023, were defined in a manner, to be specified later, to include those services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and involving minimal human intervention.
- 1.6 Recently, there were amendments made to the definition of OIDAR Services. These amendments expand the scope of tax incidence of OIDAR Services and have introduced new disclosure and registration requirements for persons supplying such services in India from overseas.
- 1.7 In this newsflash, we explore these amendments and mention the crucial aspects that suppliers of electronic services should consider with respect to tax incidence of their products and associated compliances in India even though they may not have a presence in India.

2.0 Some important definitions (prior to 1st October 2023)

Some of the definitions relevant to E-services provider are as follows:

- 2.1 “Electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network.
- 2.2 “Electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
- 2.3 “Online information and database access or retrieval services” (OIDAR) 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 such as advertising on the internet; providing cloud services; provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; providing data or information, retrievable or otherwise, to any person in electronic form through a computer network; online supplies of digital content (movies, television shows, music and the like); digital data storage; and online gaming;
- 2.4 With effect from 1st October 2023, there were amendments made to the definition of OIDAR as stated above. The condition of the supply being essentially automated and involving minimal human intervention has been eliminated.

Thus, post implementation of such changes, the degree of human intervention while rendering such services shall play no role to determine classification as an OIDAR service and all electronically supplied services whose delivery is mediated by information technology over the internet or an electronic network, and which are impossible to ensure in the absence of information technology shall be considered as OIDAR Services in India.

Thus, our readers would appreciate that the term OIDAR has been broadened to include a gamut of E-services. The broad basing of this term would impact the tax incidence of their products in India and need to be carefully appreciated by our readers.

3.0 Registration

Under the GST law, every person located outside India and providing OIDAR services to unregistered persons in India is required to register under the GST laws in India. **There is no threshold limit for the registration as an OIDAR where the supplier is located outside India.**

4.0 Rates and classification

The classification of E-services needs to be done as per Service Accounting Code (SAC) and the rates shall depend upon the classification. E-services generally fall under the 18% rate slab but this needs to be validated by tax experts. There is a four-slab rate structure for services under Indian GST laws - 5%, 12%, 18% and 28%. In case of services falling under the 28% slab, there may also be levied an additional compensation cess.

5.0 Taxes to be levied and person liable to pay tax

- 5.1 **Reverse Charge Mechanism for services provided to persons in India with valid GST registration:** For E-service providers and OIDAR services, where the location of the service provider is outside India and services are to be provided to a registered person

in India, the liability to pay GST is on the registered service recipient situated in India. This is known as the mechanism of reverse charge and the E-service/ OIDAR service provider does not have any liability in respect of GST in relation to such transactions.

5.2 Where the Service Recipient is not registered: If, however, the service receiver is not registered i.e. he does not have a valid GST identification number, then the liability to collect and pay the GST is on the OIDAR service provider. In respect of such transactions, a single tax known as Integrated Goods and Services Tax (IGST) will need to be paid to the tax authorities in India. Such payment can be done through an intermediary or through a payment representative in case the services provider does not have a fixed place of business in India.

6.0 B2B vs B2C

Under Indian GST laws, it does not matter if the transaction is a B2B one or a B2C one. What matters is whether the service recipient in India is registered or not registered under the GST law. We have discussed taxability in the previous paragraph.

7.0 How to determine whether a person is registered or not?

7.1 At the time of making the supply in electronic form, the service provider will need to request and obtain details of the customer such as Name as per GST identification, Address, Country of residence, GST Identification Number etc.

7.2 The GST identification number follows certain defined protocols and it is possible to check the validity of the GSTIN and registration status of the taxpayer on the Indian governmental website or with the help of the tax experts.

7.3 Where a person does not disclose a GSTIN then it would be presumed that such a person is unregistered under Indian GST laws and the OIDAR service provider will be required to collect and pay taxes either suo moto or through a representative, an intermediary or payment agent. **The burden to prove the validity of the service recipient's GST registration seems to be now on the services provider.**

One of the important amendments introduced with effect from 1st October 2023 is that the OIDAR supplier needs to report the transactions with registered service recipients in their monthly GST returns. This includes reporting the GST registration number of the service recipient and providing details of these taxpayers and transactions undertaken with them to the Indian tax authorities in the form of monthly compliances.

8.0 Compliances and Invoicing

8.1 The impact of the amendments cited above is that the service provider is now required to record transaction and customer level data and such other documentation that is required to satisfy that GST for each transaction done online in India has been charged with the appropriate taxes.

8.2 Even in case of transactions with unregistered persons, it is recommended to obtain the name and address as well as the state in which such person is located.

8.3 It is recommended to issue an invoice with all relevant details to the customers, both

registered as well as unregistered. This may warrant some changes to the interface and the billing systems being used by the service provider and these should be carefully navigated.

- 8.4** The registered OIDAR service providers need to file a return in Form GSTR-5A on a monthly basis on or before the specified due date. Presently this due date is the 20th day of the succeeding month.

9.0 The Way Forward

It is imperative for businesses to understand the implications in India of GST on the supply of cross border electronic services and they must ensure that they have clear and precise answers to the following questions:

- Am I liable to register under the GST laws of India for the services I provide?
- If I am already registered, do I have the mechanism to gather data required to file the monthly GST returns?
- Do I need to make any changes in the billing pattern and the data I gather from the website at the time of making supplies to my customers?
- What is the rate and classification code applicable to my services?
- Do I need to make any changes to my business because of the fact that I had not accounted for the GST implications in India?

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This Newsflash summarizes the recent amendments in GST on OIDAR Services. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said judgement and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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