

DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

From:

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OIDAR SERVICES IN GST

DEFINITION

“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 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
- iv. networks or internet;
- v. providing data or information, retrievable or otherwise, to any person in electronic form through a
- vi. computer network;
- vii. online supplies of digital content (movies, television shows, music and the like); (vi) digital data
- viii. storage; and
- ix. online gaming;

Few examples of OIDAR services include:

- Downloading or accessing software and applications.
- Providing cloud services.
- Supplying digital content like e-books, music, videos, and images.
- Offering online education, training, and certification courses.
- Providing web hosting and remotely managing maintenance of programs and equipment.
- Supplying advertising space on the internet.
- Providing electronic data interchange (EDI) services.
- Offering search-engine services.
- Providing digital data storage services.

REGISTRATION

The service providers for OIDAR Services can be based in India or providing the services from any part of the globe as the services are provided through internet as a medium. In case if the supplier of services is located outside India and the recipient of Services is unregistered in India and services are supplied directly, in such cases, the registration has to be obtained by the service provider for GST in India and pay taxes accordingly. The registration can be done using the Form GST REG – 10. It is much simplified form compared to the general registration form and lesser information is required to be filed.

In case if the Service Provider is providing the services through an intermediary or a representative, then such representative is required to be taking registration if not registered or not required if registered. In such cases also the levy of taxes will be IGST.

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GST RATE ON OIDAR SERVICES

- The Integrated Goods and Services Tax (IGST) rate for the sale of digital services in India is 18%, which applies to both OIDAR service providers located in India and outside India.
- However, there is an exception for online sales of e-books, which are subject to a reduced rate of 5%

REVERSE CHARGE MECHANISM

As per **Notification 10/2017(IT) dated 28th June 2017** if any service supplied by any person who is located in a non-taxable territory to any person who is **other than Non-Taxable online recipient (NTOR)** located in taxable territory, the transaction is under RCM.

The following transaction is under RCM

Nature of transaction	Supplier	Recipient
Any service supplied by any person who is located in a non-taxable territory to any person (Other than NTOR)	Any person located in non-taxable territory	Any person in the taxable territory

In nutshell we can summaries the nature of charge as below:

Supplier – OIDAR	Recipient (except NTOR)	Charge
Outside India	In India	Reverse Charge Mechanism
In India	Outside India	Forward Charge (This will be termed as export of service only if the conditions under sec 2(6) are satisfied)
In India	In India	Forward charge
Outside	Outside	Out of GST

What will Happen if the Recipient is an NTOR?

If the recipient is an NTOR (**Non-taxable On-line Recipient**) then the charge of GST in first 3 scenarios mentioned above would be Forward charge (As the notification 10/2017 (IT) is not applicable for such cases) and will be outside GST under the **4th scenario**. Further, as per exemption **notification ITR 9/2017**, it can be seen that none of the OIDAR services are exempted, even the government / government authority or charitable trusts are **not exempted** if they receive OIDAR service. The relevant extracts of the exemption Notification 9/2017 dated 28th June 2017.

Services received from a provider of service located in a non- taxable territory by –

(a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;

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(b) an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

(c) a person located in a non-taxable territory.

Provided that the exemption shall not apply to –

(I) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or

(II) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

The following are some examples to aid in comprehending the concept.

Scenario	NTOR or not	Tax treatment
M/s XYZ associates is an unregistered firm from Mumbai and they are using OIDAR service for business.	No	If OIDAR is located outside India, then transaction is under RCM and the firm has to mandatorily take the registration and pay GST. If OIDAR is in India its under forward charge.
M/s XYZ associates is a registered firm from Delhi and they are using OIDAR service for non- business purpose.	No	If OIDAR is located outside India, then transaction is under RCM If OIDAR is in India its under forward charge.
A state government is using OIDAR services for other than commerce /business.	Yes	Forward charge OIDAR will raise invoice.
Mr. A unregistered NRI living in USA is using OIDAR services and makes payment through Online banking.	Yes	If OIDAR is from India its under forward charge and If OIDAR is from outside India it is not taxable.

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When the OIDAR services will be treated as export / import of service?

Condition for treating any Service as Export / Import of Service sec 2(6) and sec 2(11) of IGST.

Transaction is said to be export / import of services if following conditions are satisfied.

Conditions	Export of service Sec 2(6) IGST	Import of service Sec 2(11) IGST
Condition 1	Supplier should be in India.	Supplier should be out of India.
Condition 2	Recipient out of India.	Recipient in India.
Condition 3	Place of supply should be OUT of India.	
Condition 4	Supplier & recipient should not be related person.	NA
Condition 5	Consideration should be in Forex unless for permitted transactions.	NA

A transaction shall be **export** of service if the **5** conditions mentioned above are satisfied cumulatively. Similarly, for **import** of service, **3** conditions are to be satisfied cumulatively.

TIME OF SUPPLY

The time of supply for OIDAR services under GST is determined based on a few factors. Here's a summary of the rules:

For B2B (Business to Business) Transactions:

- The time of supply is the earlier of the following two dates:
The date of issuance of the invoice by the supplier.
The date on which the supplier receives the payment.
- If the invoice is not issued within the prescribed period, the time of supply will be the date of provision of service.

For B2C (Business to Consumer) Transactions:

- If the supplier of services collects an advance and then delivers the service, a receipt voucher must be issued on the collection of the advance, and tax has to be remitted accordingly.
- The time of supply in such cases would be the date on which the advance is received.

VALUE OF SUPPLY

As per the provisions of the GST Act, the tax is payable on the transaction value. Normally in case of these services, there will be coupons issued by the service provider and this coupon value has to be considered while determining the tax amount. There will be cash back offers given by various wallets or other electronic payment methods, in such cases, the cash back is not being provided by the service provider. In some cases, the service provider provides loyalty points and the same can be redeemed in future purchases, in such cases, the taxable amount in future will be determined after

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reducing the amount equal to the amount deducted. The transaction value is derived net of the discount or coupon amount applied while purchasing the services.

INPUT TAX CREDIT

Input Tax Credit (ITC) for Online Information Database Access and Retrieval (OIDAR) services under GST allows businesses to claim credit for the tax paid on inputs used to provide such services. Here's a concise summary of the key points regarding ITC for OIDAR services:

- **Eligibility for ITC:** Only registered taxpayers in the taxable territory who use OIDAR services for business purposes are eligible to claim ITC.
- **Non-resident Service Providers:** Non-resident OIDAR service providers are not eligible to claim ITC as per the existing provisions.
- **B2B Transactions:** In the case of B2B (Business-to-Business) supplies, businesses will be eligible to take ITC, which should not significantly impact the landed cost.
- **B2C Transactions:** For B2C (Business-to-Consumer) transactions, the taxability of OIDAR services can lead to a price increase by the rate of GST, which is generally 18%.

PLACE OF SUPPLY

As GST is a destination-based taxation, the taxes should go the location where the goods or services consumed or where the recipient is located. The place of Supply for the OIDAR services is the location of the recipient and the provisions are based on Section 13(12) of the IGST Act 2017. As per the provisions, the place of supply is deemed to be in the taxable territory if any of the **two** following conditions are satisfied.

- i. the location of the address presented by the recipient through internet is present in the taxable territory.
- ii. the credit card or debit credit or store card or smart card or any other card is used by the recipient to settle the payment is issued in the taxable territory.
- iii. the billing address of the recipient is in the taxable territory.
- iv. the IP address of the device used by the recipient of the services is in taxable territory.
- v. the bank account of the recipient is in the taxable territory.
- vi. the country code of the subscriber identity module card used by the recipient is the taxable country.
- vii. the location of the fixed line used by the recipient is locate in the taxable territory.

GST RETURNS

- OIDAR service providers need to file a monthly return known as GSTR-5A by the 20th of the next month.
- Even if the service provider has no outward supplies during the month, they must file a nil return, similar to other taxpayers.

GSTR – 5A has three sections and they are

- Taxable Outward Supplies made to a consumer in India
- Amendments to taxable outward supplies to non-taxable persons in India
- Tax, Interest and other amounts payable and paid

The taxpayers who are registered in India as OIDAR Services providers have to file the regular returns line GSTR 3B

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Examples of what could be or could not be OIDAR services

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

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EQUALISATION LEVY

The Equalisation Levy is a tax introduced in India under the Finance Act of 2016, aimed at taxing the digital transactions of foreign e-commerce companies that accrue income from India. Here's a brief overview of the Equalisation Levy:

- **Applicability:** It applies to payments made to non-resident service providers for specified services, provided the annual payment exceeds ₹1,00,000 in one financial year.
- **Specified Services:** Initially, it covered online advertisement services, but it can be expanded to include other services as notified by the Government.
- **Rate of Tax:** The current rate of tax under the Equalisation Levy is 6% of the gross consideration paid.
- **Exclusions:** The levy does not apply if the non-resident service provider has a permanent establishment in India and the services are linked to that establishment, or if the total consideration is less than ₹1 lakh.
- Due date of furnishing Equalisation Levy Statement (Form-1) is on or before 30th June of Financial Year ended (unless the date is extended).

In 2020, the government announced the advanced version of the Equalisation tax. Under this new Equalisation tax, it is essential to include all online merchants who are not residents of India under tax directly. Equalisation levy is charged at the rate of 2% of the consideration receivable or received by an e-commerce operator for e-commerce services provided or supply made or facilitated by it:

- to a person resident in India, or
- to a non-resident in certain specified circumstances, which are as follows:
 - sale of advertisement, targeting a customer who is resident in India or a customer who accesses the advertisement through an Internet Protocol (IP) address located in India, and
 - sale of data collected from a person who is resident of India or from a person who uses an IP address located in India
- to a person who buys goods or services or both using an IP address located in India.
- An E-commerce operator is a non-resident who operates, owns or manages a digital or electronic facility or platform for the online provision of services or online sale of goods or both.
- The new Equalisation levy is not applicable for transactions already covered under the old Equalisation levy, i.e. in the Finance Act 2016. The new Equalisation levy system does not apply to online advertising or the provision of digital space. The new Equalisation levy applies to non-residents operating in the e-commerce sector who are residents of India and customers who have their Indian IP address.
- The threshold for the Equalisation levy is set at Rs.2 crores instead of the Rs.1 lakh that was the threshold for the Equalisation levy in 2016.

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