

GOODS

AND

SERVICES

TAX

GST
UPDATES

ONLINE INFORMATION DATABASE
ACCESS RETRIEVAL (OIDAR)

Definition of Online Information Database Access and Retrieval (OIDAR)

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;

With Effect From 1st October, 2023 the definition be revised to eliminate the condition that the supply of OIDAR has to be automated and involve minimal human intervention. This substantial broadening of the scope of the term would have the effect that any services provided online, irrespective of human intervention, would be treated as OIDAR services, thus bringing many new services within the scope of the OIDAR rules.

Definition of Non-Taxable Online Recipient in India

“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.

With Effect From 1st October 2023 the definition of NTOR to mean any unregistered person receiving OIDAR services located in India’s taxable territory and to remove the condition that OIDAR services be received for purposes other than for commerce, industry, or any other business or profession. Further, the term “unregistered person” would include a person registered solely for the purpose of deducting tax at source under section 51 of the GST law (e.g., a central or state government or department thereof, local authority, government agency, etc.

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.**

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 are amenable to levy of GST. 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 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**.

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.

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.

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.

Form GST Reg-10 Format

- Information to be Provided in Part A of form GST REG-10
 1. Legal Name
 2. Tax Identification number / unique number
 3. Name of authorized signatory
 4. Email id of authorized signatory

- Details of representative appointed in India
 1. Name
 2. Permanent Account Number (PAN)
 3. Email Id
 4. Mobile Number

- Information to be Provided in Part B of form GST REG-10 - Details of Authorized Signatory
 1. Name
 2. Gender
 3. Designation
 4. Date of Birth

5. Father's Name
 6. Nationality
 7. Aadhaar Number
 8. Address
- Date of commencement of the Online Service in India
 - Uniform Resource Locators of the Website Through which Taxable Services are Provided
 - Details of the Bank Account of the Representative in India:
 1. Account Number
 2. Bank Name
 3. Type of Account
 4. Branch Address
 - 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 antivirus 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 digitized 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. (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 other 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.

Conclusion

In conclusion, the revisions to the definitions and regulations surrounding Online Information Database Access and Retrieval (OIDAR) services under the IGST Act have significantly broadened the scope of taxable transactions. With the removal of the condition necessitating minimal human intervention for a service to qualify as OIDAR, a wide range of online services now fall within its purview, including those involving substantial human involvement.

Additionally, the expansion of the definition of Non-Taxable Online Recipient (NTOR) to include unregistered persons receiving OIDAR services in India, regardless of the purpose, further extends the tax liability net. This change also encompasses entities registered solely for tax deduction purposes under section 51 of the GST law.

Responsibility for tax payment varies depending on the nature of the transaction. For services provided by overseas suppliers to registered entities in India, the reverse charge mechanism places the onus on the recipient to pay GST. Conversely, if the recipient is an individual consumer, the supplier located outside India assumes the tax liability.

Compliance for overseas suppliers involves obtaining a single registration under the Simplified Registration Scheme and appointing a representative in India if necessary. The representative or the overseas supplier themselves are responsible for paying integrated tax on the OIDAR services provided.

Finally, filing returns for OIDAR services provided from outside India to non-taxable online recipients in India follows specific guidelines outlined in the CGST Rules, 2017. Form GST REG-10 captures essential details of the

supplier or intermediary and the appointed representative in India, facilitating compliance with GST regulations.

Overall, these amendments aim to streamline tax administration for online services, ensuring greater transparency and accountability in cross-border transactions while adapting to the evolving landscape of digital commerce.


Disclaimer


The information contained herein is in summary form and is prepared based on the provisions of GST and allied laws and related Rules, Circulars, Notifications therein. For details, please refer the relevant provisions. While the information is believed to be accurate to the best of our knowledge, we do not make any representations or warranties, express or implied, as to the accuracy or completeness of this information. Reader should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.

CONTACT US

NOIDA OFFICE

DPNC GLOBAL LLP

 Windsor Grand, 15th Floor,
Plot No. 1C, Sector-126,
Noida-201303, Uttar Pradesh

 +91.120.6456990

 dpnc@dpncglobal.com

 <https://dpncglobal.com/>

GURGAON OFFICE

DPNC GLOBAL LLP

120, Vipul Business Park,
Sector-48, Sohna Road,
Gurugram, Haryana-122018

FOLLOW US ON

