Tax Talk

The Monthly Service Tax Bulletin - Also Covering GST **Rs. 5/-**

Editorial

November 8 and 9, the two dates will be remembered for their shock and surprise contents. The move to demonetize Rs 500 and Rs 1,000 currency tenders by the Central Government was a laudable and historic effort to clean up the decade's long corruption and black money. As Indian citizens, we all should be proud of the fact that we elected a government, which is capable of taking such brave decision for the long-term betterment of the country's economy. On this decision we have witnessed a ball of mixed emotions coming through from every corner of the country. On one hand we could see strings of people whole heartedly support the agenda of "no pain no gain". While others agitated against the decision. Nevertheless the Government has been successful with its consistent approach to upkeep its demonetisation policy. It is time now to prepare oneself to live under the environment of 3s – Shocks, Surprises and Surgical Strikes.

Amidst the turmoil and confusion, developments on the GST front are continuing to happen. The Model GST Law was issued by the Empowered Committee of the State Finance Ministers in the public domain for obtaining the feedbacks of the common masses. Several suggestions and representations were made in respect with the Model Law. The said suggestions have been considered and accordingly, the GST Council Secretariat has released revised draft Model GST Laws along with draft GST Compensation law. Having proposed to be introduced in the Parliament, these bills are in near final form and provide the clearest ideas about GST till date. The government should get credit for the good work put in to make the draft clearer, comprehensive and business friendly. With a system driven compliance platform and clarity in law, the Government is moving in the right direction. Now it is upto the business concerns to get ready and put a preparation and implementation mechanism in place.

In order to roll out the crucial Goods and Services Tax (GST) from April 1 next year, the Government was considering advancing the winter session of Parliament to pass the Central GST, State GST and Integrated GST Bills. However, ever since the beginning of the Winter Session, the opposition has used the demonetization issue as a pre-text to stall the proceedings of the Parliament.

The Central Government has issued several notifications in relation to the Online Data access or retrieval service which deals with determination of the Place of Provisions of service, exemption from Service Tax and applicability of Reverse Charge Mechanism. Further, a Circular has been issued to clarify the issues related to the withdrawal of exemption from service tax on cross border online information and database access or retrieval services provided online/electronically from a non – taxable territory to consumers in taxable territory in India. The circular and the notification have been dealt in detail on Page 2 & 3 of the issue.

Since its constitution, the GST Council has been working on various areas which basically include the fixation of the threshold limit, tax rate structure and administration structure. The key decisions and other inputs from the council meetings have been briefed on Page 4 of the issue.

We hope this newsletter will add some value and prove to be beneficial to the readers. We highly solicit suggestions/opinions of the readers. Please feel free to convey your views at **servicetaxgoyal@gmail.com**. You may refer all earlier issues of Tax Talk at **www.gstpeople.com.**

CA Sushil Kr Goyal

DUE DATES

PAYMENT	FORM	DUE DATE
Payment for the month ending November, 2016 (assessees other than individual, proprietorship firm, HUF, OPC having aggregate value of taxable service upto Rs. 50 lakhs in the previous financial year, partnership firm and LLP)	E-Payment	6th December, 2016

The service tax applicability on the Online Information and Database Access or Retrieval (OIDAR) Services has undergone significant changes w.e.f. 01.12.2016. The definition of the OIDAR services has been enlarged. Further, exemption enjoyed by Government, local authority, governmental authority or individual receiving service from non-taxable territory has been withdrawn where OIDAR services are received from non-taxable territory. The responsibility of paying tax, taking registration, filing returns, etc has been casted upon the service provider located in non-taxable territory where service is provided to a non assessee online recipient.

The place of provision of OIDAR services is the location of the service provider as per rule 9 of Place of Provision of Services Rules, 2012. However, w.e.f. 01.12.2016, Rule 9 excludes OIDAR services from its ambit, consequently rule 3 shall apply automatically and hence the location of service receiver shall be the place of provision of this service. Other related amendments have also been made w.e.f. 01.12.2016 which have significant implications on various aspects viz. registration, taxability, reverse charge mechanism, returns, etc. We are discussing each aspect in detail in the following sections:

Meaning of OIDAR

The existing definition of OIDAR services given in Place of Provision of Services Rules, 2012 has been redefined w.e.f. 01.12.2016 to assign “OIDAR services” the same meaning as assigned to it in the clause (ccd) of sub-rule 1 of rule 2 of the Service Tax Rules, 1994 as under:

“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 via 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, etc.); (vi) digital data storage; and (vii) online gaming.”

Non assessee online recipient

Non-assesse online recipient means Government, a local authority, a governmental authority or an individual 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.

A deeming provision has also been inserted that in case of OIDAR services are provided by any person located in a non-taxable territory and received by non-assesse online recipient, a person receiving such services shall be deemed to be a non-assesse online recipient, if such person does not have service tax registration under these rules

Place of provision of OIDAR service

The place of provision of OIDAR services was the location of the service provider till 30.11.2016. Amendments have been made w.e.f. 01.12.2016; consequently the place of provision of OIDAR service shall be the location of the service recipient. Hence tax shall be levied on the provision of cross border OIDAR services by a person located in non-taxable territory to a person located in the taxable territory which was not the case before 01.12.2016.

Exemption

Serial 34 of the Mega Exemption Notification exempts services received from a provider of service located in a non-taxable territory by Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession.

However, this exemption shall not be applicable where OIDAR services are received from outside the taxable territory, in India by the Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession.

Reverse Charge Mechanism

The recipient of the service located in the taxable territory shall be liable to pay service tax where taxable service is provided or agreed to be provided by any person which is located in a non-taxable territory subject to certain exemptions.

With the change in the place of provision of cross border OIDAR services the provisions relating to reverse charge applicability have also been amended w.e.f. 01.12.2016. According to the amended provisions –

Cross Border B2C OIDAR Services

Cross border B2C OIDAR services means online information and database access or retrieval services provided by a person located in non-taxable territory to a non assesse online recipient (i.e. Government, a local authority, a governmental authority or an individual receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession) in taxable territory in India.

Reverse charge mechanism shall not apply in this case and (i) the service provider located in the non-taxable territory, or (ii) an intermediary located in the nontaxable territory (including an electronic platform, a broker, an agent or any other person, by whatever name called) who arranges or facilitates provision of such service not providing the main service on his account, or (iii) any person located in taxable territory representing such service provider located in the non-taxable territory, or (iv) person appointed by the service provider in the taxable territory for the purpose of paying service tax (where the service provider does not have a physical presence or does not have a representative for any purpose in the taxable territory), as the case may be shall be the person liable to pay tax.

Cross Border B2B OIDAR Services

Cross border B2B OIDAR services provided in taxable territory in India to a business entity will be taxed under reverse charge i.e. the business entity receiving the services will pay tax under reverse charge.

Registration

Special registration procedure has been provided which will be based on country code/registration/business number obtained by such service provider in the country of incorporation. Application shall be made in Form ST-1A for registration within a period of thirty days from the date on which the service tax is levied or the person located in non taxable territory has commenced supply of taxable services in the taxable territory in India, whichever is earlier. Documents, such as copy of certificate of registration/incorporation would be accepted in

PDF format, which may be forwarded to the authority granting registration via Email. Further, a simple declaration by the service provider stating and affirming that they would charge service tax from the individual customers in India and deposit the same with Government of India through internet is required.

A non-PAN based registration number and acknowledgment shall be generated and Registration Certificate (in FORM ST 2A) shall be deemed to be issued from the date of application. The Forms have been prescribed in Notification No. 48/2016-ST dated 09.11.2016.

Return

A half-yearly return in Form ST-3C with respect to cross border OIDAR services shall be required to be submitted electronically for the months covered in the half-yearly return by the 25th of the month following the particular half-year. Form ST-3C has been prescribed in Notification No. 48/2016-ST dated 09.11.2016.

Point of Taxation

The value of taxable service would be calculated on the basis of the rate of exchange which shall be the applicable rate of exchange as per the generally accepted accounting principles on the date when point of taxation arises in terms of the Point of Taxation Rules, 2011 [Rule 11 of Service Tax Rules]. The point of taxation in the instant case would generally be earliest of the following three events of issuance of invoice or receipt of payment or completion of provision of service.

Invoice

An invoice/a bill/challan for OIDAR services provided in taxable territory by a person located in the non-taxable territory shall include any document, by whatever name called, whether or not serially numbered but containing name and address of the person receiving taxable service to the extent available and other required information.

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 Bannerblockers;
   (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)1online 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)1the 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.

Indicative list of non-OIDAR services

- Supplies of goods, where the order and processing is done electronically
- Supplies of physical books, newsletters, newspapers or journals
- Services of lawyers and financial consultants who advise clients through email
- Booking services or tickets to entertainment events, hotel accommodation or car hire
- Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (in other words, using a remote link)
- Offline physical repair services of computer equipment
- Advertising services in newspapers, on posters and on television

Administration

Large Taxpayer Unit, Bengaluru under the Central Board of Excise and Customs (CBEC) would be the administrative authority for the purpose of administration of service provider in non-taxable territory providing cross border OIDAR services provided to non-assesse online recipient in taxable territory.

GST Updates

The GST Council in the meeting held on 3.11.2016 decided upon a 4-slab tax structure of 5, 12, 18 and 28 percent respectively with lower rates for essential items and the highest for luxury and de-merit goods, many of which also attract an additional cess. GST rates agreed upon by Centre and states are as follows: Foodgrains – Exempted, Necessary and daily use goods - 5%, Standard rate I – 12%, Standard rate II – 18%, Peak rate – 28% and Luxury goods, Tobacco, Aerated drinks – 28% plus cess.

The decision to impose 5 percent on essential items is intended to bring down inflation and levying a cess on luxury and sin goods over the peak rate would not burden the central kitty for compensation to states.

Both the proposals of imposition of cess and multiple tax slabs have not been welcome by analysts for varied reasons .It has been argued that imposition of a cess will complicate the proposed uniform indirect tax structure. This goes against the policy of philosophy of simplification and rationalisation of tax regime. Additionally, the levy of cess would lead to cascading of taxes, unless the credit of cess is allowed against the levy of GST, which in turn leads to a flawed system in stark contrast with the expectation of the industry. Taxation will get more complicated with different tax slabs and it will take away the aim of boosting GDP by one to two percent through GST.

On 4.11.16, the Council took up the prickly issue of administrative control over assessee. The Centre had proposed "cross empowerment" whereby both the Centre and states will have powers to scrutinise and audit assessee. There was a division between the Centre and some states. The Centre is hopeful of consensus of 'vertical division' of assessee, one without a turnover threshold, to resolve the issue of dual administrative control under the GST regime. Vertical Division, based on ratios, assigns taxpayers to a tax administration, Centre or state, for a period of 3 years for all purposes including audit. Taxpayers could be divided in a ratio which would balance the interest of the Centre and the states, both with respect to revenue and spread of numbers. States feel they have infrastructure deployment at grassroot level and small taxpayers are familiar with state authorities. Centre, on the other hand, has not agreed to the states demand of exclusive control over small entities which earn less than Rs 1.5 crore in annual revenue, as it wants single registration mechanism for ease to service taxpayers. As a compromise, it is willing to give administrative power over 2/3rd of taxpayer base, with service tax continuing to be administrated by Centre. States however are pressing for 'horizontal division' i.e. exclusive state control over those with annual turnover upto Rs 1.5 crore and dual control for beyond that.

Government has also started the process of enrolment in a staggered manner of existing registered dealers under Excise, Service Tax and State Value Added tax by creating dedicated website https://www.gst.gov.in/. Government has also formulated time schedule clearly specifying the start and finish date for each state. (Refer Table below)

GST registration - Enrolment Plan of States

The schedule of the enrolment activation drive for states as in GSTN website is given below:

States	Start Date	End Date
Puducherry, Sikkim	08/11/2016	23/11/2016
Gujrat, Maharashtra, Goa, Daman and Diu, Dadra Nagar Haveli, Chhattisgarh.	14/11/2016	29/11/2016
Odisha, Jharkhand, Bihar, West Bengal, Madhya Pradesh, Assam, Tripura, Meghalaya, Nagaland, Arunachal Pradesh, Manipur, Mizoram.	30/11/2016	15/12/2016
Uttar Pradesh, Jammu and Kashmir, Delhi, Chandigarh, Haryana, Punjab, Uttarakhand, Himachal Pradesh, Rajasthan.	16/12/2016	31/12/2016
Kerala, Tamil Nadu, Karnataka, Telangana, Andhra Pradesh.	01/01/2017	15/01/2017
Service Tax Registrants.	01/01/2017	31/01/2017
Delta All Registrants (All Groups).	01/02/2017	20/03/2017

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