# Online Information and Database Access or Retrieval [*OIDAR*] Services

*Service Tax Implications*

Government has issued series of service tax notifications which have radically changed service tax implications on online information and database access or retrieval services **("OIDAR service").**

- ✓ Notification No. 46/2016-ST,
- ✓ Notification No. 47/2016-ST,
- ✓ Notification No. 48/2016-ST,
- ✓ Notification No. 49/2016-ST and
- ✓ Circular No. 202/12/2016-ST

$9^{th}$ Nov 2016 (Applicable from $1^{st}$ Dec 2016)

***<u>Definition of Online Information and Database Access or Retrival Services</u>***

"**Online information and database access or retrieval services**" means *<u>services whose delivery is mediated</u>* by information technology over internet or electronic network, the supply of which is ***essentially automated involving minimal human intervention and impossible to ensure in absence of information technology***.

Further, an illustrative list of electronic services which will be considered as OIDAR has also been provided as below:

- ✓ Advertising on internet;
- ✓ Providing cloud services;
- ✓ Provision of e-books, movie, music, software and other intangibles via 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, etc.) – digital data storage; and
- ✓ Online gaming

In the above context, examples and indicative list of services that will be covered under OIDAR services and that of services not covered under OIDAR services are provided by way of clarification as follows:

***<u>Indicative list of non-OIDAR services</u>***

- ✓ 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

It has also been clarified that using the internet, or some electronic means of communication, just ***to communicate or facilitate outcome of service*** need **not always mean** that a business is providing OIDAR services.

**Examples of services whether or not OIDAR services**

| **Service** | **Whether Provision of servicemediated 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 providers 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 eg, photographs, reports, medical results | Yes | No | No |

**Indicative List of OIDAR services**

***Website supply, web-hosting, distance maintenance of programmes and equipment***;

- ✓ Website hosting and webpage hosting;
- ✓ Automated, online and distance maintenance of programmes;
- ✓ Remote systems administration;
- ✓ Online data warehousing where specific data is stored and retrieved electronically;
- ✓ Online supply of on-demand disc space.

***Supply of software and updating thereof;***



 

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

***Supply of images, text and information and making available of databases;***

- ✓ Accessing or downloading desktop themes;
- ✓ Accessing or downloading photographic or pictorial images or screensavers;
- ✓ The digitised content of books and other electronic publications;
- ✓ Subscription to online newspapers and journals;
- ✓ Weblogs and website statistics;
- ✓ Online news, traffic information and weather reports;
- ✓ 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);
- ✓ The provision of advertising space including banner ads on a website/web page;
- ✓ Use of search engines and Internet directories.

***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;***

- ✓ Accessing or downloading of music on to computers and mobile phones;
- ✓ Accessing or downloading of jingles, excerpts, ringtones, or other sounds;
- ✓ Accessing or downloading of films;
- ✓ Downloading of games on to computers and mobile phones;
- ✓ Accessing automated online games which are dependent on the Internet, or other similar electronic networks, where players are geographically remote from one another.
- ✓ Supply of distance teaching.
    - o 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;
    - o Workbooks completed by pupils online and marked automatically, without human intervention.

*Now Let us understand the taxability of this service*:

**Presently**, the place of provision of OIDAR services is location of service provider. Therefore the cross-border business to consumer **('B2C')** and business to business **('B2B')** OIDAR services <u>*provided by a person in non-taxable territory*</u> and received by a person in taxable territory **are outside the purview of service tax**.

From 1st December 2016, above 4 notifications will be in force, what it means:



 

***Notification No 46/2016 – ST***

Amendment has been made in Place of Provision of Services Rules, 2012 to amend the place of provision of OIDAR services *from service provider's location to service receiver's location.* The relevant amendments in this regard are summarized as below:

**Rule 3:** Place of provision shall be location of service receiver. In case ***other than online information and database access or retrieval services***, where the location of Service receiver is not known, then location of service provider. - **(Now OIDAR will fall in general rule 3 as omitted from rule 9)**

**Rule 9:** ~~b) Place of provision shall be service provider's location~~ ~~**in case of online information and database access or retrieval service.**~~ - **(Omitted)**

**Conclusion** – In case of OIDAR services, Place of provision will always be location of service receiver **(Destination based Taxation)**

***Notification No 47/2016-ST***

***Amendment in Mega Exemption Notification 25/2012 (Entry No 34)***

**34)** Services received from a provider of service located in a non-taxable territory by—

(*a*) 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;
(*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 online information and database access or retrieval services received by persons specified in clause (a).***

***Notification No 49/2016-ST***

***Amendment in Reverse charge Notification (30/2012)***

**Entry No 10:** It provides for full reverse charge (100% RCM) in case any taxable services is provided or agreed to be provided by a person in Non- Taxable Territory (NTT) & received by any person in Taxable Territory (TT) ***"other than non assesse online recipient" (Added by N/N 49/2016)***

It simply means that in relation to services provided or agreed to be provided by way of online information and database access or retrieval services, by any person located in a non-taxable territory and received by any person in the taxable territory **other than non-assesse online recipient,** recipient of such service will be liable to pay service tax under 100% RCM.



 

***Notification No 48/2016-ST***

It has been further provided that in case of online information and database access or retrieval services provided or agreed to be **provided by any person located in a non-taxable territory** and *received by non-assesse online recipient*, *provider of service located in a non-taxable territory shall be the person liable for paying service tax:*

"**Non-assesse online recipient**" **(NAOR)** 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;

**Explanation** - For the purposes of this clause, "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 Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243Wof the Constituion; ";

It has been clarified that the **cross border B2C OIDAR services would mean** services provided by a person located in non-taxable territory to non-assessee online recipient ('NAOR'), i.e. Government, local authority, governmental authority or an individual located in taxable territory of India in relation to purposes other than business or profession.

***Making Intermediary in NTT Liable to pay Service Tax for services provided to NAOR***

It has also be provided that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and **received by non-assesse online recipient**, **an intermediary located in the non-taxable 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 but does not provides the main service on his account shall be **deemed to be receiving such services from the service provider in non-taxable territory and providing such services to the non-assesse online recipient** ***except*** when such intermediary satisfies all the following conditions, namely :-

(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, its supplier in non-taxable territory and the service tax registration number of the supplier in taxable territory;

(b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge i.e. intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-assesse online recipient and the supplier of such services;

(c) the intermediary involved in the supply does not authorise delivery;

(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the service provider.



 

***Agent of Service provider in NTT in India will be liable to pay ST in case where services are provided to NAOR***

It has been provided that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and **received by non-assesse online recipient**, any **person located in taxable territory representing such service provider** for any purpose in the taxable territory shall be the person liable for paying service tax:

***Appoint Agent for the purpose of paying Service Tax on OIDAR Services to NAOR***

**If the service provider does not have a physical presence or does not have a representative** for any purpose in the taxable territory, the service provider may appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax.

It has been provided that in case of OIDAR services provided by person in NTT 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.**

***Location of Service Receiver in Case of OIDAR Services by a person in NTT to a person in TT***

It has been provided that person receiving such services shall be ***deemed to be located in the taxable territory if any two of the following non-contradictory conditions are satisfied***, namely:-
(a) the location of **address presented** by the service recipient via internet is **in taxable territory;**
(b) the **credit card or debit card** or store value card or charge card or smart card or any other card by which the service recipient settles payment has been **issued in the taxable territory**;
(c) the service recipient‟s **billing address** is in the taxable territory;
(d) the **internet protocol address** of the device used by the service recipient is in the taxable territory;
(e) the service recipient‟s bank in which the account used for payment is maintained is in the taxable territory;
(f) the **country code** of the subscriber identity module **(SIM) card used** by the service recipient is of taxable territory;
(g) the location of the service recipient‟s **fixed land line** through which the service is received by the person, is in taxable territory:

**Summary:** ***(Applicable w.e.f 1st December 2016) – Online Information and Database Access Services***

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|---|---|
| **Activity = Service u/s 65B (44)** | "**Online information and database access or retrieval services**" means *services whose delivery is mediated* by information technology over internet or electronic network, the supply of which |



 

<table>
<tr><td></td><td>is essentially automated involving minimal human intervention and impossible to ensure in absence of information technology.<br><br>It is an inclusive definitions and includes following services :<br><br>✓ Advertising on internet;<br>✓ Providing cloud services;<br>✓ Provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;<br>✓ Providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;<br>✓ Online supplies of digital content (movies, television shows, music, etc.) – digital data storage; and<br>✓ Online gaming</td></tr>
<tr><td>Place of Provision of Such Service u/s 66C</td><td>Rule 3 will apply & Location of Service Receiver will always be the POPOS</td></tr>
<tr><td>Negative List u/s 66D</td><td>Not Applicable</td></tr>
<tr><td>Reverse Charge (30/2012)</td><td>100 % Reverse charge is applicable if SP in NTT & SR in TT<br><br><u>Exception</u> : If SR is NAOR – SP in NTT is liable to pay ST<br><br>
<table>
<tr><th>Service recipient in taxable territory receiving cross border B2C services</th><th>Service</th><th>Taxable/ Exempted</th><th>Taxing Mechanism</th><th>Person liable to pay tax</th></tr>
<tr><td>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</td><td>OIDAR</td><td>Taxable [w.e.f. 01.12.2016]</td><td>Forward charge</td><td>Service provider in non-taxable territory</td></tr>
<tr><td>Government, a local authority, a governmental authority or</td><td>Other than OIDAR</td><td>Exempted</td><td>Exempted</td><td>Exempted</td></tr>
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<tr><td rowspan="2"></td><td>an individual in relation to any purpose other than commerce, industry or any other business or profession</td><td></td><td></td><td></td><td></td></tr>
<tr><td>Other than 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</td><td>All including OIDAR</td><td>Taxable</td><td>Reverse Charge</td><td>Service recipient in taxable territory</td></tr>
<tr><td>Mega Exemption (25/2012)</td><td colspan="5">Entry No 34 provides for exemption, if service provider is in NTT & SR is Government, local authority, A government authority or Individual receiving services for personal consumption i.e not in the course of business or profession, <u>this exemption is not available for OIDAR Services</u> – In such case Service provider in NTT is made liable to Service Tax</td></tr>
<tr><td>Abatement (26/2012)</td><td colspan="5">No Abatement i.e <u>ST@14%</u> will be applicable on full Value + <u>SBC@0.5%</u> + <u>KKC@0.5%</u></td></tr>
<tr><td>Registration u/s 69</td><td colspan="5">Person located in Non Taxable Territory liable for paying the service tax in the case of online information and database access or retrieval services may make an application for registration in form ST-1A for registration within a period of thirty days from the date on which the service tax under section 66B of the Act is levied or the person located in non taxable territory has commenced supply of taxable services in the taxable territory in India and notwithstanding anything contrary in these rules, the registration shall be deemed to be granted in form ST-2A from the date of receipt of the application.<br><br><u>FORM ST- 1A</u><br><br>Application form for registration under section 69 of the Finance Act, 1994 (32 of 1994) for person in non-taxable territory providing online information and database access or retrieval services in India</td></tr>
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|---|---|
| **Invoice (Rule 4A)** | In case of online information and database access or retrieval services provided or agreed to be provided in taxable territory by a person located in the non-taxable territory, an invoice, a bill or, as the case may be, challan 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 information in such documents as required under this sub-rule |
| **Return (Rule 7)** | ***FORM-ST-3C*** <br><br> Return under section 70 of the Finance Act, 1994, read with rule 7 of Service Tax Rules, 1994 with respect to online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by any person located in the taxable territory |
| **Cenvat Credit** | It has been clearly provided by the circular that Service provider in NTT would not be eligible to book any input tax credit. |
| **Aggregator Model** | If the electronic market place owner enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the market place owner, he is covered under the aggregator model. The aggregator is either required to have a physical presence in India or is required to appoint a person in India to discharge the compliance liability on his behalf. |

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Saurabh Chhabra, Editor (Tax & Accounting) at LexisNexis brings more than 5 years of practical Tax compliance & consultancy experience to his role as a Tax editor.

He is highly dedicated & motivated tax professional, and continuously contributing analytical content to upgrade the professional domain.

He is a semi qualified, Chartered Accountant and Delhi University graduate. He has recently qualified CA-Final (first group) & also appeared for the Second Group in Nov 2016.

He had gained extensive tax compliance experience through Tax Analyst roles for a variety of companies including PSU's, Banking companies and CA firms located in the Delhi/NCR.

Below are some links of his recently published articles at various professional platforms:

***Insights of Indian GST Framework (One Country! One Market! One Tax! )***

https://lexisnexisindia.wordpress.com/2016/09/12/insights-of-indian-gst-one-country-one-market-one-tax/

***Impact of GST on SME's***

https://taxfileindia.wordpress.com/2016/10/08/impact-of-gst-on-small-medium enterprises-smes-startups/

***Invoicing under GST***

https://lexisnexisindia.wordpress.com/2016/10/07/invoice-under-gst-and-its-importance/

***Analysis of recent TDS/TCS amendments under Income Tax Law***

http://www.caclubindia.com/share_files/analysis-of-recent-amendments-under-tds-tcs-provisions--71424.asp

***Service Tax Budget Bulletin, 2016***

http://www.caclubindia.com/share_files/service-tax-budget-bulletin-2016-69634.asp



 