

## **Treading the GST Path – XXXIV**

### **Online Information and Database Access or Retrieval Service – Certain doubts**

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Section 2 (17) of the IGST Act, 2017 defines Online information and database access or retrieval services” (OIDAR) as

*“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 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;*

Section 13 of the IGST Act lays down the manner of determination of place of supply of services, if either the supplier or recipient of the supply of services is outside India. As per sub section (12) thereof,

*(12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.*

*Explanation. - For the purposes of this sub-section, 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 recipient of services through internet is in the 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 recipient of services settles payment has been issued in the taxable territory;*

*(c) the billing address of the recipient of services is in the taxable territory;*

*(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;*

*(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;*

*(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;*

*(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.*

Let us take the case of an Indian Service provider, offering OIDAR services like providing various online contents through their website, where some of the subscribers are from outside India.

Take the case of a subscription package (similar to that of TIOL) which is valid for a particular period and the consideration is paid in advance.

As per Section 13 (12) *ibid*, the place of supply of such services would be the location of the service recipient, which is abroad and hence no GST is payable and the activity may also qualify as export of service, subject to fulfilment of the conditions prescribed for this purpose.

But the Explanation under Section 13 (12) is bothersome, according to which, if any two of the non contradictory conditions mentioned therein are satisfied, the location of the service recipient shall be the place of supply shall be deemed to be in taxable territory (i.e. India) and hence GST would be attracted.

In this connection, the following questions require to be clarified.

- (i) What is the significance of the term "non-contradictory" conditions? Does it mean that the listed out conditions are already non-contradictory or one has to check whether the two conditions which are being satisfied are "non-contradictory" or not? If so, how to decide whether any two conditions are contradictory or non contradictory?
  
- (ii) In case of subscription packages which are valid over a period of time, at the time of receiving the payment it cannot be concluded as to whether any of the two conditions would be satisfied during the validity period or not. For example, a person based out of India, who has subscribed to TIOL subscription package, may travel to India during the validity period and may satisfy conditions (d), (f) and (g)

under the Explanation to Section 13 (12). But at the time of receiving the payment and raising an invoice, how to decide the place of supply? Similarly, when periodical payments are involved, some payments made may be made in such a way that conditions (b) and (e) would be satisfied.

It is earnestly hoped that the CBEC would clarify these issues at the earliest.

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