

Online Information and Database Access or Retrieval Services (OIDAR)

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OIDAR - compliance for non-resident entities in India

Background

The Goods and Services Tax (GST) was introduced in India w.e.f. 1 July 2017 and is based on the principle of destination-based consumption taxation.

OIDAR is a category of services provided through the medium of the internet and received by the recipient online without having any physical interface with the supplier of such service.

As per the Indian GST law, if a foreign service provider renders OIDAR services to an unregistered recipient located in India (i.e., Non-taxable Online Recipient), the foreign service provider is mandatorily required to obtain a registration under Indian GST and pay GST. This is done to ensure a level playing field for OIDAR services provided by Indian entities.

In the maturing GST regime, litigations started arising as to what services will be covered under OIDAR due to a lack of clarity of the meaning of the words “essentially automated and involving minimal human intervention” used in the definition of OIDAR services.

On the recommendations of the GST council, the Union Budget 2023 has proposed to amend the definition of OIDAR services to reduce interpretation and litigation on taxation of OIDAR services.

Key elements for OIDAR service [Section 2(17) of the IGST Act, 2017]:



The service should be provided online over the internet or an electronic network



The service cannot be provided in the absence of information technology

Illustrative list of OIDAR services:

- Providing advertisements on the internet
- Website supply, web hosting, distance maintenance of programmes and equipment
- Provision of software and its updation thereof
- Online supplies of digital content (movies, TV shows, music, etc.)
- Digital data access and storage
- Online gaming
- Distance teaching, coaching and education

Non-Taxable Online Recipient (NTOR)

NTOR refers to **any unregistered person** receiving OIDAR services located in the taxable territory and includes a person registered solely in terms of clause (vi) of section 24 of the CGST Act, 2017

Determining the onus to discharge tax liability under GST

Where the supplier of OIDAR services is located in a non-taxable territory

Supply to a registered entity	Supply to a NTOR	Supply through an intermediary
Where the supplier of OIDAR services is located outside India and the recipient is a registered entity under Indian GST, the recipient in India will be liable to pay GST under reverse charge, and the supplier has no obligation.	Where the supplier of OIDAR service is located in a non-taxable territory, and the recipient is an NTOR, the supplier of services has to mandatorily obtain registration and pay GST under forward charge.	In case an intermediary located in the non-taxable territory arranges/facilitates the supply of OIDAR services, such an intermediary is deemed to be supplying such services to the NTOR and is required to pay GST under forward charge.

Registration and compliance:

- The foreign entity needs to take a **single registration** under the GST vide Form GST REG-10 via the Simplified Registration Scheme
- Monthly returns are required to be filed in FORM-GSTR-5A before the 20th of each month

Direct tax implications:

From an Indian Income Tax perspective, the following are critical areas which require attention:

- Applicability of **Equalization Levy (EL)**
- Fulfilment of **Business Connection** in India and its interplay with the tax treaty between India and other countries, including evaluation of **PE risks**, if any

Changes proposed in Budget 2023

The Finance Bill 2023 proposes to widen the scope of both OIDAR services and the definition of NTOR for the purpose of levying GST.

Echoing similar regimes worldwide, the objective is to provide a level-playing field between overseas and local businesses.



Widening the scope of OIDAR and NTOR:

- Usage of words “essentially automated and involving minimal human intervention” were removed from the definition of OIDAR service provider to widen the scope of OIDAR services
- Scope of NTOR enhanced to include any unregistered person receiving OIDAR services located in the taxable territory



Impact of the amendments* proposed:

- Rendering services through an electronic medium, which are not totally automated and involve human intervention, will now be covered under OIDAR services
- Any unregistered entity under Indian GST, irrespective of the purpose of usage, i.e., for business or individual purposes, will be covered under NTOR and therefore, foreign OIDAR service providers have to pay GST under forward charge.

* With effect from date yet to be notified

Critical action points : Non-resident OIDAR service providers



Suppliers to re-evaluate the nature of services rendered to Indian recipients and if the same qualifies as OIDAR services



Non-resident OIDAR service provider supplying services to any unregistered person in India liable to obtain registration and discharge pay GST

How Grant Thornton Bharat can help



Detailed evaluation of applicability of OIDAR



Filing of application for registration



Assist in review of documents on pre-agreed parameters



Routine compliance support

Our expertise and strengths

Our experts are here to guide you with their years of hands-on experience

Vikas Vasal

National Managing Partner, Tax
E: Vikas.Vasal@in.gt.com

Krishan Arora

Partner, Tax
E: Krishan.Arora@in.gt.com



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