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SERVICE TAX TO BE PAID BY FOREIGN ENTITIES ON CROSS BORDER B2C ONLINE INFORMATION AND DATABASE ACCESS OR RETRIVAL (OIDAR) SERVICES W.E.F 1 DECEMBER 2016

THE POWER OF BEING UNDERSTOOD



The Service Tax Regulations in relation to Online Information Database Access or Retrieval Services (OIDAR) provided by service provider located outside India to service recipient located within India has been amended effective from 1 December 2016. The definition of term 'OIDAR' has also been amended to include various other services provided electronically like online advertising, online gaming, cloud services etc.

With effect from 1 December 2016, (Circular No. 202/12/2016-Service Tax dated 9 November 2016) service providers located outside India providing OIDAR services to non-assesse online recipient (i.e. B2C transactions and service to Government, Government authorities in relation to any purpose other than commerce, industry or any other business or profession) located in taxable territory (i.e. the Whole of India excluding the State of Jammu & Kashmir) will have to comply with Service Tax regulations in India by getting registered, discharging Service Tax liability (presently @ 15% including cess) and filing periodical returns.

As regards to service providers located outside India providing OIDAR service to other non-assesse online recipient (i.e. B2B transactions), service recipient located in India will be liable to Service Tax under Reverse Charge Mechanism.

Certain key aspects of amendment in Service Tax regulations are as under

Sr No.	Particulars	Key aspect				
1	Change in the definition of OIDAR service	<table><tr><th>Pre amendment (till 30 Nov 2016)</th><th>Post amendment (w.e.f 1 Dec 2016)</th></tr><tr><td><ul style="list-style-type: none">■ Service of providing any data or information, retrieval or otherwise in electronic form through a computer network</td><td><ul style="list-style-type: none">■ Services which are provided by information technology over internet or electronic medium with minimal human intervention and impossible to ensure in the absence of information technology.■ Includes various electronic services.</td></tr></table> <p>Indicative list of inclusion / exclusion from definition of OIDAR post amendment:</p> <p>1. Inclusion List:</p> <ul style="list-style-type: none">a. advertising on internet, cloud services, digital data storageb. provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet.c. online supplies of digital content; (movies, television shows, music, etc)d. providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;e. online gaming;f. provision of digital content is automatic but involves a small amount of manual process <p>2. Exclusion list: wherein electronic means of communication are used to facilitate outcome of service:</p> <ul style="list-style-type: none">a. Supplies of goods, where the order and processing is done electronicallyb. Services of lawyers and financial consultants who advise clients through emailc. Booking services or tickets to entertainment events, hotel accommodation or car hired. Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network using a remote linke. Advertising services in newspapers, on posters and on televisionf. Offline physical repair services of computer equipmentg. Supplies of physical books, newsletters, newspapers or journals.	Pre amendment (till 30 Nov 2016)	Post amendment (w.e.f 1 Dec 2016)	<ul style="list-style-type: none">■ Service of providing any data or information, retrieval or otherwise in electronic form through a computer network	<ul style="list-style-type: none">■ Services which are provided by information technology over internet or electronic medium with minimal human intervention and impossible to ensure in the absence of information technology.■ Includes various electronic services.
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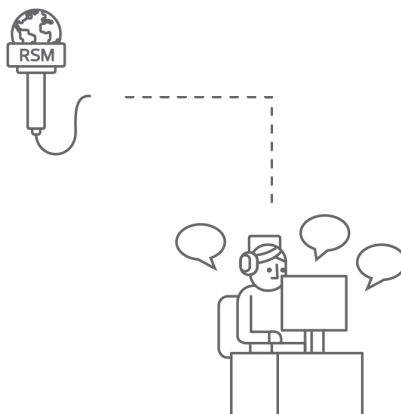
Sr No.	Particulars	Key aspect																	
2	Taxability on OIDAR services	<div>The Service Tax applicability on OIDAR services may be summarized as follows</div> <table><tr><th>Service Provider</th><th>Service Receiver</th><th>Pre amendment</th><th>Post amendment</th></tr><tr><td rowspan="2">Located outside India</td><td>non-assesse online recipient located in India</td><td>Exempt from Service Tax</td><td>Services taxable on forward charge basis</td></tr><tr><td>Other than non-assesse online recipient located in India</td><td>Not taxable under reverse charge mechanism. (Certain services which was not covered under per amended definition of OIDAR was liable to tax under reverse charge mechanism)</td><td>Taxable under reverse charge mechanism</td></tr><tr><td rowspan="2">Located in India</td><td>non-assesse online recipient located outside India</td><td rowspan="2">Taxable under Service Tax</td><td>Export of service / Exempt from service tax</td></tr><tr><td>Other than above located outside India</td><td>Export of service / Exempt from service tax</td></tr></table>	Service Provider	Service Receiver	Pre amendment	Post amendment	Located outside India	non-assesse online recipient located in India	Exempt from Service Tax	Services taxable on forward charge basis	Other than non-assesse online recipient located in India	Not taxable under reverse charge mechanism. (Certain services which was not covered under per amended definition of OIDAR was liable to tax under reverse charge mechanism)	Taxable under reverse charge mechanism	Located in India	non-assesse online recipient located outside India	Taxable under Service Tax	Export of service / Exempt from service tax	Other than above located outside India	Export of service / Exempt from service tax
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3	Person liable to pay tax	<div>Service Tax on OIDAR service provided to non-assesse online recipient shall be collected and remitted by the following:</div> <ul style="list-style-type: none">■ Service provider located in non-taxable territory;■ Agent appointed by the service provider in the taxable territory;■ Any person representing the Service provider■ Intermediary / electronic platform located in non-taxable territory arranging or facilitating provision of cross border B2C OIDAR service. However, such Intermediary / electronic platform shall not be liable if all the following conditions are fulfilled:<ul style="list-style-type: none">– Invoice, bill or receipt identifies the provider and service tax registration number of service provider and description of service;– Intermediary / electronic platform shall not collect, process or is responsible for payment between non assessee online recipient and service provider;– Intermediary / electronic platform shall not authorize any delivery ; &– Intermediary / electronic platform shall not decide on the terms and conditions for provision of service.																	
4	Service Tax on intermediary located outside India	<div>Liability on intermediary located in non-taxable territory</div> <ul style="list-style-type: none">■ Facilitation of cross border B2C OIDAR service: If the Intermediary located in non-taxable territory including an electronic platform satisfies the above condition, the actual provider of OIDAR services in non-taxable territory shall be required to register and discharge service tax liability.■ However, if intermediary does not satisfy the said condition, the intermediary will be deemed to be receiving and providing cross border OIDAR service in taxable territory and thus liable for collecting service tax from consumers in taxable territory and depositing the same with the Government of India.■ Fee for acting as intermediary: Said fees/commission will not be liable to Service Tax the said service is in the nature of intermediary and not OIDAR services. The place of provision of intermediary services in location of service provider which is non-taxable territory.																	
5	Service Tax registration requirements	<ul style="list-style-type: none">■ Service provider located in non-taxable territory shall be required to obtain registration in India. It shall appoint an agent on its behalf in case such service provider does not have a physical presence in India.■ Procedure for obtaining non pan based registration including the respective forms have been notified■ Threshold exemption of INR 10 lakhs are applicable to such service providers																	

Sr No.	Particulars	Key aspect
6	Returns	Procedure for payment of service tax and filing of half yearly service tax returns including the respective forms have been notified
7	Procedure	Service provider shall be required to record data limited to what is required to satisfy that tax for each provision of service has been charged and accounted for appropriately. Further, such service provider shall be required to issue an invoice, bill or challan containing particulars as prescribed in ST Rules

The Central Government has issued Notification No.46/2016-ST,47/2016-ST,48/2016-ST and 49/2016-ST dated 9 November 2016; 50/2016-ST dated 22 November 2016 and 51/2016-ST dated 30 November 2016 in the said regard. Also, Central Board of Excise and Customs ('CBEC') has issued circular bearing no. 202/12/2016-ST dated 9 November 2016 clarifying taxability and procedures to be followed.

RSM Comment

It is imperative for each business entity to analyze Service Tax applicability on services provided or received electronic in light of the amendment Service Tax regulations.



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This newsflash is general in nature. In this newsflash, we have summarised the contents of Circular No. 202/12/2016-Service Tax issued by the Central Board of Excise and Customs on 7 November 2016. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

19 November 2016