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GST chargeable on OIDAR services by foreign firms to individuals & Govt irrespective of any usage w.e.f. October 1, 2023

Background:

The GST Council in its 50th meeting held on July 11, 2023 had decided to amend Rule 64 and FORM GSTR-5A of CGST Rules, 2017 so that OIDAR service providers can provide the details of supplies made to registered persons in India in the return under FORM GSTR-5A. The intention behind this amendment is to keep track of due payment of tax on a reverse charge basis by such registered persons in India in respect of supplies received from Online Information and Database Access or Retrieval (OIDAR) service providers.

Until now, services provided by OIDAR providers located abroad in non-taxable territories were exempt from taxation when received by the central government, state government, government authorities, or individuals for non-business purposes. However, this exemption has been eliminated, effective from October 1, 2023.

This change is in response to the Finance Act of 2023, which amended the Integrated Goods Services Tax Act, 2017 ("**the IGST Act**") to expand the definition of "non-taxable online recipient." As per the revised definition, a non-taxable online recipient now includes any unregistered individual or entity receiving OIDAR services within India's taxable territory, regardless of the purpose for which they are received.

The CBIC vide **Notification No. 28/2023-Central Tax dated July 31, 2023** made certain changes in the Finance Act which will be effective from October 1, 2023.

Changes in OIDAR services from the Finance Act, 2023

- **Section 160 of the FA, 2023 – Section 2(16) of the IGST Act:**

"(16) "non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval services located in taxable territory."

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The definition of “non-taxable online recipient” aims to broaden the scope of OIDAR. Any unregistered individual in India's taxable territory, regardless of the purpose, who receives OIDAR services will be considered a non-taxable online recipient. Previously, services from OIDAR providers located in non-taxable territories abroad, when received by the central government, state government, government authorities, or individuals for non-business purposes, were exempt from taxation. However, this exemption has been eliminated from October 01, 2023.

The Government vide **Notification No. 02/2023 – Integrated Tax dated September 29, 2023**, seeks to notify the provisions of Integrated Goods and Services Tax (Amendment) Act, 2023 dated August 18, 2023 amended the IGST Act to levy GST on services provided by OIDAR Service provider with effect from October 01, 2023.

Amendments in the IGST Act through IGST (Amendment) Act, 2023			
Current Provision	Amended Provision	Effect	Notified From
Section 2 of the IGST Act			
Definitions			
Section 2(17) “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	Section 2(17) “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	The amendment excluded online money gaming as defined under Section 2(80B) of the CGST Act, 2017 from the definition of online information and database access or	October 1, 2023

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<p>supply ⁴[****] impossible to ensure in the absence of information technology and includes electronic services such as,—</p> <p>(i) advertising on the internet;</p> <p>(ii) providing cloud services;</p> <p>(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;</p> <p>(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;</p> <p>(v) online supplies of digital content (movies, television</p>	<p>supply ⁴[****] impossible to ensure in the absence of information technology and includes electronic services such as,—</p> <p>(i) advertising on the internet;</p> <p>(ii) providing cloud services;</p> <p>(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;</p> <p>(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;</p> <p>(v) online supplies of digital content (movies, television</p>	<p>retrieval (OIDAR) services.</p>	
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shows, music and the like); (vi) digital data storage; and (vii) online gaming;	shows, music and the like); (vi) digital data storage; and (vii) online gaming, <i>excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017;</i>		
<p align="center">Section 5 of the IGST Act</p> <p align="center">Levy and collection</p>			
(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at	(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at	The amendment inserted the words 'other than the goods as may be notified by the Government on the recommendations of the Council' to the proviso to sub-section (1) of section 5 of the	October 1, 2023

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<p>such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:</p> <p>Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975.) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962. (52 of 1962.)</p> <p>(2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine</p>	<p>such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:</p> <p>Provided that the integrated tax on goods <i>other than the goods as may be notified by the Government on the recommendations of the Council</i> imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975.) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962. (52 of 1962.)</p>	<p>IGST Act, which suggests the exclusion of certain notified goods from the levy of IGST in terms of the Customs law provisions. These goods would be notified by the Government, based on the recommendation of the Council, and the taxes on import of such notified goods would be levied and collected as an inter-State supply in terms of the levy provisions of the IGST Act, instead of the Customs law.</p>	
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<p>fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.</p> <p>(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.</p> <p>(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of</p>	<p>(2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.</p> <p>(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.</p>		
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<p>goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.</p> <p>(5) The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:</p>	<p>(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.</p> <p>(5) The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act</p>		
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<p>Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:</p> <p>Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.</p>	<p>shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:</p> <p>Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:</p> <p>Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.</p>		
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<p>Section 14 of the IGST Act</p> <p>Special provision for payment of tax by a supplier of online information and database access or retrieval services</p>			
After Section 14	<p>After Section 14</p> <p><i>Special provision for specified actionable claims supplied by a person located outside the taxable territory</i></p> <p><i>14A. (1) A supplier of online money gaming, as defined in clause (80B) of section 2 of the Central Goods and Service Tax Act, 2017, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.</i></p> <p><i>(2) For the purposes of complying with provisions of sub section (1), the supplier of online money gaming shall obtain a</i></p>	<p>The amendment inserted a new section, section 14A in the IGST Act, to provide for special provision for online money gaming supplied by a person located outside the taxable territory to a person located in India, including requirement of taking a single registration under the Simplified Registration Scheme; payment of Integrated Tax on such supplies and provision for blocking of access by the public to any information generated, transmitted,</p>	<p>October 1, 2023</p>

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	<p><i>single registration under the Simplified Registration Scheme referred to in sub-section (2) of section 14 of this Act:</i></p> <p><i>Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the supplier:</i></p> <p><i>Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.</i></p> <p><i>(3) In case of failure to comply with provisions of sub section (1) or sub</i></p>	<p>received or hosted in any computer resource used for supply of online money gaming by such supplier in case of failure to comply with provisions of registration and payment of tax in such manner as specified in the Information Technology Act, 2000.</p>	
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	<i>section (2) by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.</i>		
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The stated Notification brings in the changes in the definition of OIDAR service under Section 2(17) of the IGST Act, by excluding online money gaming from the OIDAR services. A new section is brought in the GST Act for regulations for online money gaming provided by entities located outside to individuals or entities in India. This includes the requirement for a single registration under a Simplified Registration Scheme for the payment of IGST on such services, and the provision for blocking public access to any information generated or hosted in computer resources used for online money gaming, if the supplier fails to comply with the provisions of registration and tax payment provisions in such a manner as specified in the Information Technology Act, 2000.

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Effective changes in the form and manner of submission of returns by OIDAR services

The CBIC vide **Notification No. 51/2023 – Central Tax, dated September 29, 2023** (“the **Notification No. 51/2023**”), seeks to make an amendment (Third Amendment, 2023) to the CGST Rules, 2017 in supersession of **Notification No. 45/2023 dated September 06, 2023**, which are as follow:

Notification No. 51/2023 – Central Tax		
CGST (Third Amendment) Rules, 2023		
Rule	Before the Notification No. 51/2023	After the Notification No. 51/2023
Form and manner of submission of return by persons providing OIDAR services		
Rule 64	<p>64. Form and manner of submission of return by persons providing online information and database access or retrieval services.-</p> <p>Every registered person providing online information and data base access or retrieval services from a place outside India to a 1[non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or to] a registered person shall file</p>	<p>“64. Form and manner of submission of return by persons providing online information and data base access or retrieval services and by persons supplying online money gaming from a place outside India to a person in India.-</p> <p>Every registered person either providing online money gaming from a place outside India to a person in India, or providing online information and data base access or retrieval services</p>

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	<i>return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.</i>	<i>from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or to a registered person other than a non-taxable online recipient, shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.”</i>
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This Notification seeks to bring within the ambit of Rule 64 of the CGST Rules, that every registered person who is providing OIDAR services from a place outside India to a person in India other than a registered person shall file a return in FORM GSTR-5A on or before the 20th day of the month succeeding the calendar month or part thereof.

Exemption on supply of services provided by OIDAR service provider in a non-taxable territory

Further, the CBIC vide **Notification 12/2023-Integrated Tax (Rate) dated September 26, 2023** (“**Notification No. 12/2023 – Integrated Tax (Rate)**”), substituted the proviso of Sl. No. 10 of **Notification No. 9/2017-Integrated Tax (Rate) dated June 28, 2017** (“the **IGST Service Exemption Notification**”):

The IGST Service Exemption Notification
Exemptions on supply of services under the IGST Act

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Sl. No.	Before Notification No. 12/2023 – Integrated Tax (Rate)	After Notification No. 12/2023 – Integrated Tax (Rate)
10.	<p>Services received from a provider of service located in a non- taxable territory by –</p> <p>(a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession</p> <p>(b) an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or</p> <p>(ba) way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of</p> <p>(i) pre-school education and education up to higher</p>	<p>Services received from a provider of service located in a non- taxable territory by –</p> <p>(a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession</p> <p>(b) an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or</p> <p>(ba) way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of</p> <p>(i) pre-school education and education up to higher</p>

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	<p>secondary school or equivalent; or</p> <p>(ii) education as a part of an approved vocational education course</p> <p>(c) a person located in a non-taxable territory:</p> <p>Provided that the exemption shall not apply to</p> <p>(i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or</p> <p>(ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.</p>	<p>secondary school or equivalent; or</p> <p>(ii) education as a part of an approved vocational education course</p> <p>(c) a person located in a non-taxable territory:</p> <p>Provided that the exemption shall not apply to</p> <p>(i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or</p> <p>(ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.</p> <p>Provided that the exemption shall not apply to online information and database access or retrieval services received by persons specified in item (a) or item (b).</p>
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Earlier, the IGST Service Exemption Notification specially carved out the services of “*services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India*” from the exemption.

Now, the CBIC vide **Notification 12/2023-Integrated Tax (Rate) dated September 26, 2023** removed the restriction as stated in the IGST Service Exemption Notification. However, this does not tantamount to exemption of such services.

Conclusion:

Foreign OIDAR service providers like Facebook Inc., Twitter Inc., Google, and others earn substantial revenue from their Indian customer base, who are not registered persons in India. Meaning thereby, these foreign firms providing OIDAR services are subject to GST on the supply of OIDAR Services to unregistered individuals, necessitating comprehensive registration and compliance with GST. OIDAR services, delivered via information technology over the internet, are automated and involve minimal human intervention. Such services encompass advertising on the internet, cloud services, sale of e-books, films, music, and software, digital content supply, data storage, etc.

Effective from October 1, 2023 these foreign companies providing OIDAR to all individuals and government, regardless of whether the services are used for personal or business purposes, would be chargeable to GST. Consequently, this is expanding the horizon of GST and making all such foreign service providers to take registration in India and pay GST with due compliance as per the GST law.

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