

Change in service tax treatment (B2B and B2C) of Online Information/ Cloud Services

The Central Government of India has amended the service tax law in case of both, B2B and B2C provision of electronic services (under online information and database retrieval category), when such services are provided by service providers located outside India to service recipients located in India. This appears to be a step in line with the OECD guidelines on BEPS Action Paper on e-commerce, wherein the OECD had recommended certain guidelines for VAT treatment of e-commerce transactions.

We have summarised the changes as under:

What has changed

- The scope of 'online information and database retrieval services' (OIDR) has been considerably expanded. The new definition covers a wide array of content and services that are provided over the internet or any electronic network and, *inter alia*, includes cloud services, supply of e-books, music, other entertainment over internet, digital storage, online gaming, etc.
- The place of provision of OIDR services has changed from 'location of service provider' to 'location of service recipient' - this would imply that the services would be taxable in India when the service recipient is located in India.
- In case of B2B OIDR services received from outside India, the recipient (who is already registered under the service tax law in India) has to pay service tax on reverse charge basis.
- In case of B2C OIDR services received from outside India, the **service provider** has to obtain registration, pay service tax and comply with the other provisions (including issuance of invoice) of the law (to this extent). However, no credit of input tax is available to such overseas service provider (as specified in the FAQ).
- For B2C OIDR services to be taxable in the hands of the service provider, the services need to be provided to a 'non-assessee online recipient,' which covers not only individuals but also Government, local authority or a government authority, all located in India and receiving OIDR services.
- An intermediary or marketplace that provides the applications/ electronic services through its website would be deemed to be providing these services to the final customer if either of the following happens: (i) the invoice is issued by the intermediary, (ii) payment is collected by the intermediary, (iii) the general terms and conditions of the service is set by the intermediary or (iv) intermediary authorises delivery of services.
- However, it may be noted that payment companies, internet providers or mobile operators not involved in delivery of services should not be covered under this service.

From when are these changes effective?

- The changes come into effect from **December 1, 2016**.

How has the change been effected

- The Place of Provision of Service Rules, 2012 ('POP Rules') have been amended to cover two changes - (i) OIDR definition has been changed (as mentioned above), and (ii) the place of provision of service has been changed to the default rule, which is based on the location of service recipient. Rule 9(b), which dealt with OIDR services, has been omitted.
- The Mega Exemption Notification has been amended, wherein services received by non-assesseees (individuals for personal consumption) which enjoyed an exemption if received from outside India for non-

commercial use, is now not applicable, where such services are in the nature of OADR services.

- The Service Tax Rules, 1994 have been considerably amended to provide for the definition of OADR services and the introduction of necessary compliances for such services to be carried out in India by the foreign service provider.
- The definition of 'person liable to pay service tax' has also been amended to cover persons providing OADR services from outside India, and non-resident intermediaries of providers of such OADR services. As a result, all these persons would be required to comply with the law where services are provided B2C. They are required to register with the Bengaluru LTU authorities.

Implications

- As a result of the above changes, for B2B category, import of OADR services would mean change in tax position, and would entail payment of service tax on reverse charge basis. Service tax paid may be reasonably available as credit, and hence this change should not impact B2B service recipients.
- The largest impact would be for B2C services, where service providers who are not located in India would be required to pay service tax in India by obtaining registration, and also file their service tax returns.
- This would impact foreign companies not having presence in India, but having customers in India. Such companies would have to evaluate steps to comply with this new law.

We have provided links to the relevant notifications and **a detailed circular with FAQs** issued by the government.

1. [Circular on electronic services](#)
2. [Notification No. 46-2016-ST dated 9.11.2016](#)
3. [Notification No. 47-2016-ST dated 9.11.2016](#)
4. [Notification No. 48-2016-ST dated 9.11.2016](#)
5. [Notification No. 49-2016-ST dated 9.11.2016](#)

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