

SURGICAL STRIKE BY CBEC

ONLINE INFORMATION AND DATABASE ACCESS OR RETRIEVAL SERVICES

The CBEC has issued Notification 46/2016, Notification 47/2016, Notification 48/2016, Notification 49/2016 on 9th November, 2016 thereby making a sea change in the Place of Provisions of Services Rules (PPSR) for 'online information and database access or retrieval services' and thereby impacting the taxability'.

1. The definition of online information and database access or retrieval services has been changed by inserting clause (ccd) in Rule 2(1) of Service Tax Rules, 2011:

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 via 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, etc.);*
- (vi) digital data storage; and*
- (vii) online gaming*



The scope of this definition has widely increased by including cloud services, online gaming and data storage. The phrase '*services whose delivery is mediated by information technology over the internet or an electronic network*' is very extensive and may cover many online activities which are based on electronic platform.

2. An amendment has been made in Rule 9 of PPSR to omit online information and database access or retrieval services and hence the place of provision of service will now fall under Rule 3 of PPSR.

As per the amended Rule 3 of PPSR, 2012:

'The place of provision of a service shall be the location of the recipient of service:

Provided that in case of services other than online information and database access or retrieval services, where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service'

Therefore, this implies that service tax will be payable by service receiver under Reverse Charge Mechanism for services in the nature of online information and database access or retrieval services. This is a stark difference from the current tax structure. At present the place of provision of service is the location of service provider. Hence, since the service providers in this respect are outside India, the place of provision of service is also outside India and tax was not payable on such procurement.

These amendments are effective from 01.12.2016. Henceforth, for all such services procured from outside India, service tax is payable by service receiver in India. Though, this is a neutral situation as credit of the same is available in the subsequent

month for which the payment is made; there will be some cash flow impact. Similarly, all such services provided from India will be considered as export of services.

3. If any of the following two non-contradictory conditions are satisfied, then the person receiving online information and database access or retrieval services will be deemed to be located in the taxable territory:
 - a) the location of address presented by the service recipient via internet is in 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 service recipient settles payment has been issued in the taxable territory;
 - c) the service recipient's billing address is in the taxable territory;
 - d) the internet protocol address of the device used by the service recipient is in the taxable territory;
 - e) the service recipient's bank in which the account used for payment is maintained is in the taxable territory;
 - f) the country code of the subscriber identity module (SIM) card used by the service recipient is of taxable territory;

4. Further amendment has been made in Notification 25/2012-ST whereby exemption is withdrawn for online information and database access or retrieval services procured by government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession.

5. In Rule 2(l) of Service Tax Rules, 2011 clause (ccba) is inserted as under:

'non-assesse online recipient means Government, a local authority, a governmental authority or an individual receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory'

Explanation.- For the purposes of this clause, "governmental authority" means an authority or a board or any other body :

(i) set up by an Act of Parliament or a State legislature; or

(ii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution'

Further to this, a person receiving such services shall be deemed to be a non-assesse online recipient, if such person does not have service tax registration under these rules. This means that all unregistered service receivers (including individuals) deemed to be a non-assesse online recipient

6. A proviso has been inserted in clause d(ii) of Rule 2(l) of Service Tax Rules, 2011 where service tax is payable by service provider of online information and database access or retrieval services located in a non-taxable territory in cases where services are received by non-assesse online recipient. This means that service tax is payable by service provider located in non-taxable territory in case the said services are procured by government, a local authority, a governmental authority or an individual for any non-commercial activity.



In case, the foreign service provider has any representative office in India, then such office is liable to pay service tax. However, if the service provider does not have any physical presence/ representative office in India, then the foreign service provider may have to appoint a person in the taxable territory for the purpose of paying service tax. Registration will have to be done by making an application in Form ST-1A and registration shall be deemed to be granted in form ST-2A from the date of receipt of the application. Return is to be filed in Form ST-3C.

7. In cases where an intermediary located in the non-taxable territory including an electronic platform, a broker, an agent or any other person, by whatever name called, who arranges or facilitates provision of such online services but does not provides the main service on his account shall be deemed to be receiving such services from the service provider in non-taxable territory and providing such services to the non-assesse online recipient except when such intermediary satisfies all the following conditions, namely:
- a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question, its supplier in non-taxable territory and the service tax registration number of the supplier in taxable territory;
 - b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge i.e. intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-assesse online recipient and the supplier of such services;
 - c) the intermediary involved in the supply does not authorise delivery;
 - d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the service provider



All these changes are w.e.f. 01st December 2016.

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