



Amplitude of OIDAR services

M/s NCS Pearson Inc.¹

The Karnataka Authority for Advance Ruling (“AAR”) examined if the administration of computer based test services provided online by NCS Pearson Inc (“Applicant”) under different modalities would qualify as Online Information and Database Access or Retrieval Services (“OIDAR”) and therefore be taxable under the Integrated Goods and Service Tax Act, 2017 (“the Act”) and related rules and notifications.

Background

The Applicant is not located in India and operates from non-taxable territory. The Applicant is engaged in administering computer-based test services to its clients such as educational institutes, professional licensing organizations, etc. The Applicant provides services of online exams and tests via electronic software to the *non-taxable online recipients*² in India, on behalf of its clients, which have been classified into three categories (i.e. Type - 1, Type - 2 and Type - 3).

Type - 1

The entire test end to end is self-administered by the candidate taking the test online. The test has multiple choice questions (“MCQs”) The candidate can create a profile, remit payment, select the desired test and take it, and the result is generated based on a computer algorithm. There is no human intervention required from the service provider nor is there any requirement for the human supervision or for the candidate to be present at a test centre.

Type - 2

Type - 2 is similar to Type - 1, except that the candidate is required to be present at a test centre where a test administrator verifies the identity of the candidate, provides a copy of the result. The entire test is recorded on camera for review by a test security official.

Type - 3

The test is a combination of MCQs, and essay-based questions and is taken under the supervision of a test

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² Defined under Section 2(16) of the IGST Act, 2017 as “non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any other than commerce, industry or any other business or profession, located in taxable territory..”



administrator at a test centre. Part of the report is computer generated (i.e., for the MCQs) and part is assessed by a human evaluator which is considered cumulatively to arrive at the final score. The report is then made available to the candidate online via email.

With this background the questions raised for determination in the present application are:

- Whether the service provided for Type - 2 and Type - 3 test can be classified as OIDAR Services?
- If the Type - 2 and Type - 3 test provided by the Applicant is not classifiable as OIDAR service, whether the Applicant is liable to pay IGST on reverse charge basis for supply of said services to non-taxable online recipients in India or will it be considered as exempt services?

Discussion

The Applicant argued that Type - 2 test are not OIDAR services as they do not meet the criterion of 'minimum human intervention' since it is impossible to complete the provision of service in the absence of administrators at test centres since verification and registration of the candidates are undertaken by a test administrator.

The Applicant cited European guidelines³ for interpretation of the phrase "minimum human intervention", wherein it is explained that human involvement on the supplier's side is considered relevant and not an intervention on the side of the customer. The guidelines also provide that where every individual supply made to the customer requires human intervention on the side of the supplier it should be viewed as requiring more than "minimum human intervention". The Advance Ruling Authority was of the view that the guideline should not be interpreted literally. In the same guidelines the activity of spinning the wheel of the roulette or drawing physical cards to play blackjack or baccarat is considered as minimal human intervention. The guidelines further state that where the human activity on the side of the supplier focuses on the whole environment for provision of services and not on individual requests from customers this should not be

considered as trespassing the requirement of 'minimal human intervention'. In the present case the authorities held that a distinct need of the service recipient met by the supplier of service in a specific manner would make the activity something more than minimal human intervention. The human activity on part of the supplier is focused on the entire test centre and not on the needs of the candidate taking the test.

It was held that the main object of the whole activity was to take online tests, so the principal supply would be OIDAR service provided by the Applicant to non-taxable online recipients however, as the activity of taking tests online was naturally bundled with taking the test at the assigned test centre for Type - 2, under the supervision of the administrator, and as such activities are supplied in conjunction with each other in the ordinary course of business, it could be termed as composite supply under Section 2(30) of the Central Goods and Service Tax Act, 2017.

With respect to Type - 3 test, the result can only be generated after the essay-based question are evaluated by a human evaluator. The Applicant placed reliance on the CBEC circular No. 202/12/2016-Service Tax dated November 09, 2016 and flyer prepared by NACEN for reference on OIDAR under Goods and Service Tax ("GST"). It was upheld that Type - 3 tests are outside the ambit of OIDAR services as they require more than "minimum human intervention".

The third question raised by the Applicant was relevant only with respect to Type - 3 test which cannot be classified as OIDAR services. Services (not including OIDAR services) received from a provider of service located in a non-taxable territory by 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 are exempt from the levy of IGST⁴. In the case of Type - 3 as the supply itself is exempt, evaluating the levy of GST on reverse charge basis becomes irrelevant.

³ Guidelines agreed by the VAT Committee of the European Commission dated February 28 2017

⁴ Notification no.9/2017 – IGST (R) dated June 26 2017



With respect to Type - 3 test, the activity is not taxable in the hands of either the service provider (i.e., the Applicant) or the service recipient.

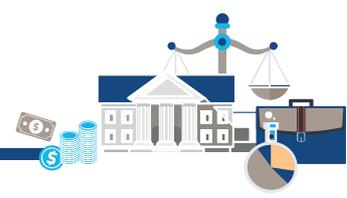
Dhruva Comments:

Though the place of supply for OIDAR service is specified in the Act, there are no guidelines on the finer aspects of “minimum human intervention”, scope of over the internet or an electronic network and other similar criteria for OIDAR service in India. There could also be instances of active or passive human intervention e.g. when a recorded lecture is uploaded and accessed by a student online, would that be construed as OIDAR service. At one hand, services are not possible to be provided without the lecturer, on the other hand, at the time of taking the service, there is no human intervention. There could also be instances of a combination of both viz. online trainings and visits outside India. This aspect becomes important to determine who will pay GST for supplies made to a non-resident online recipient (not registered and availing the services for other than business or commerce).

The suppliers of OIDAR services are necessarily required to obtain registration in India irrespective of the threshold exemption for registration and their location of operation and are accountable to the GST authorities for the services provided in India.

In another ruling in the case of *Spring Nature Customer Service Centre*⁵ on the supply of OIDAR services the Karnataka Advance Ruling Authorities held **1)** as per Section 14 of the Act, the charge of tax for supply of OIDAR services to a non-taxable online recipient is on the service provider and hence **2)** the onus is also on the supplier of OIDAR services to establish that the supply is made for purposes other than for business, commerce, industry or profession. This creates an additional onus on the foreign suppliers, who otherwise do have the means to identify the use of OIDAR services and have to rely on the ultimate recipient for such information.

⁵ TR 882 AAR 2019 NT





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