

INDIA EXPERT

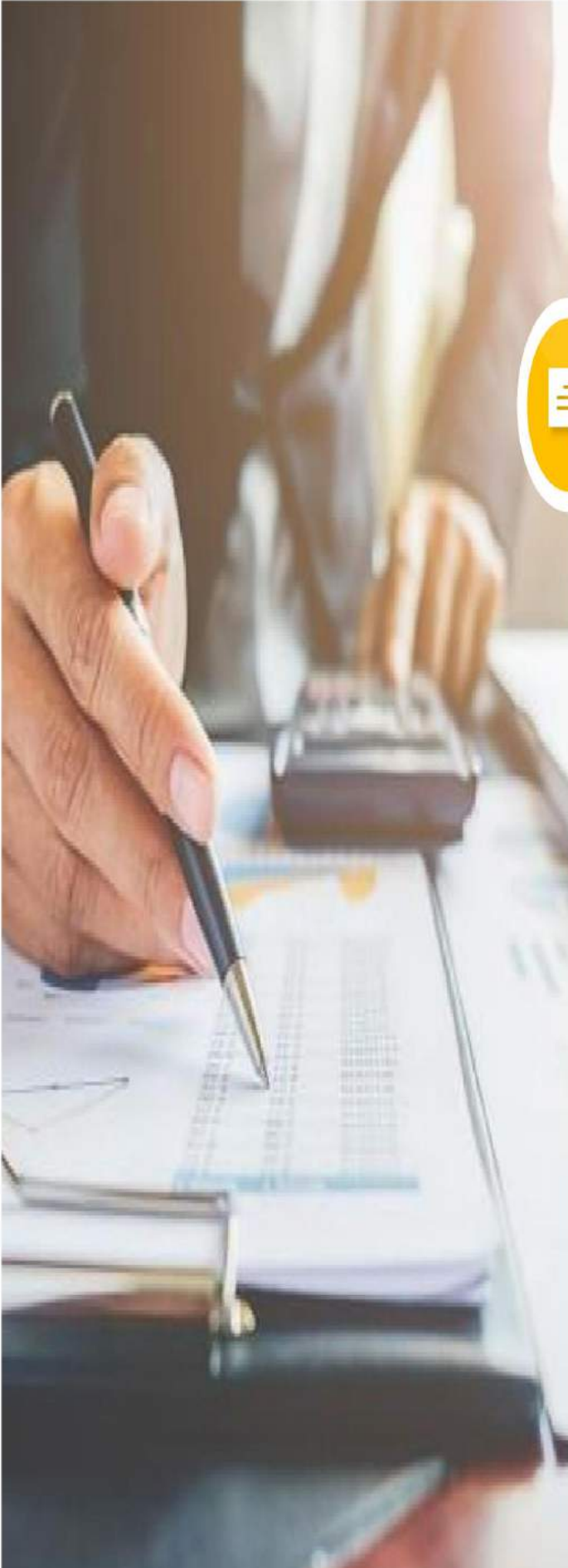


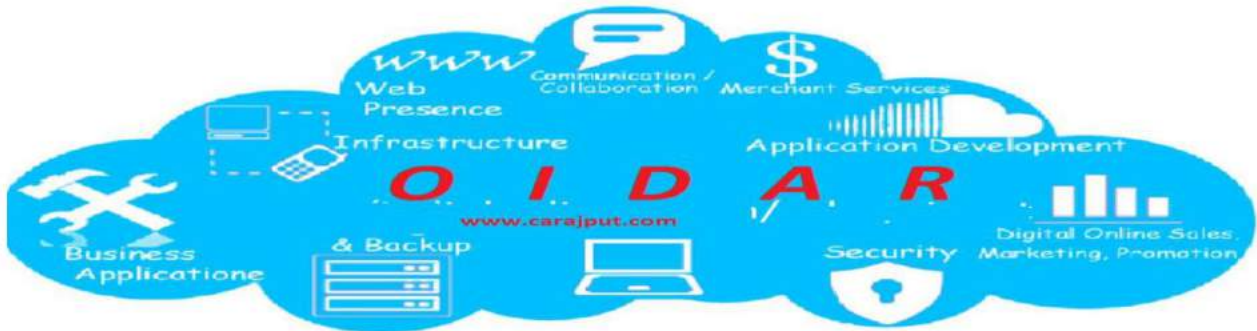
About Us

INDIA EXPERT, Chartered Accountants, is one of the leading providers of financial and business advisory, internal audit, statutory audit, corporate governance, & international taxation and regulatory services. With a global approach to service delivery, we are responds to clients' complex business challenges with a broad range of services

across industry sectors and national boundaries. The Firm has been set up by a group of energetic, open minded, highly skilled and motivated professionals who have gained experience from top consulting companies and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Assurance, Risk, Taxation, & Business advisory services to various clients & their stake holders. We have been associated with various national & International recognized associations in the field of our profession; Association of International tax consultants (AITC) is

INDIA EXPERT



ONLINE INFORMATION DATABASE ACCESS ORRETRIEVAL (OIDAR)

Businesses are not restricted by geographical borders in today's Scenario. One of the means of delivering services from abroad in India is through the use of the internet. There are several mechanisms in which service users are delivered these services. For instance, in India, Amazon provides cloud-based services (AWS) from the United States.

Online information database access and retrieval services is a type of services offered via the means of internet and received by the user online without having any physical interaction with the provider of these services.

Both the following conditions must be satisfied to be a OIDAR service. If one is not satisfied, the service is not OIDAR.

- Delivery is mediated through internet.
- The supply is essentially automated involving minimal human intervention and impossible without information technology.

Examples of OIDAR services:

- Advertising on internet
- Providing cloud services (Google Drive)
- Provision of e-books, movie, music, software and other intangibles via internet (Hotstar, Amazon Prime Video)
- Providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;
- Online gaming (Steam)

Non-OIDAR services

- Supplies of goods, where the order and processing is done electronically
- Supplies of physical books, newsletters, newspapers or journals
- Services of lawyers and financial consultants who advise clients through email

- Booking services or tickets to entertainment events, hotel accommodation or car hire
- Educational or professional courses, where the content is delivered by a teacher over the internet
- Offline physical repair services of computer equipment
- Advertising services in newspapers, on posters and on television

The IGST act describes OIDAR to imply services whose distribution is managed by information technology over the internet or an electronic network and the essence of which makes their procurement basically automatic and requiring minimal manual interference and difficult to maintain in the absence of information technology and involves electronic services such as:

- Online Advertisement through the Internet or Online ads
- Online Availability of cloud services or Cloud Computing Provision
- The delivery of data, retrievable or otherwise, to any person in electronic form via a computer network
- Provision through telecommunications networks of e-books, video , music, software and other intangibles
- Digital content supplies online (movies, tv programmes, songs and the like) digital data storage
- Online Gaming Programming / Online gambling games
- Providing data to any person in electronic form via a computer network, retrievable or otherwise,

Few Example of what could be or could not be OIDAR services.

| Service | Whether provisions of service mediated by information technology over the internet or an electronic network. | Whether it is automated and impossible to ensure in the absence of Information technology | OIDAR Services |
|--|---|--|-----------------------|
| PDF documents manually emailed by provider | Yes | No | No |
| PDF documents automatically emailed by provider's system | Yes | Yes | Yes |
| PDF document automatically downloaded from site | Yes | Yes | Yes |

| | | | |
|---|------------|------------|------------|
| Stock photograph available for automatic download | Yes | Yes | Yes |
| Online course consisting of pre-recorded videos and downloadable PDF's | Yes | Yes | Yes |
| Online course consisting of pre-recorded videos and downloadable PDF's plus support from a live tutor | Yes | No | No |
| Individually commissioned content sent in digital form E.g. photograph, reports, medical Results | Yes | No | No |

How to determine the location of the recipient?

For this service, the recipient will be deemed to be located in the taxable territory (i.e., in India) if **any two** of the following conditions are satisfied-

1. Location of address presented by the recipient through internet is in India
2. Credit card or debit card (or any other card such as store value card) which the recipient uses to pay is issued in India
3. Billing address of the recipient of services is in India
4. IP address of the device used by the recipient is in India
5. Bank of the recipient's account used for payment is maintained in India
6. Country code of the subscriber identity module card used by the recipient of services is of India
7. Location of the fixed land line through which the service is received by the recipient is in India.

The government can notify any service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service. This will be done in order

- prevent double taxation
- prevent non-taxation of the supply of a service
- for the uniform application of rules

Special provision in case of a service provider outside India and a non-tax-payer in India

| Supply | Service provider | Receiver | Who is liable to pay IGST? |
|--|-----------------------|-------------|---|
| Supply of online information and database access or retrieval | Any person located in | Non-taxable | Supplier of services located in a non-taxable |

| | | | |
|----------|-------------------------|------------------|-----------|
| services | a non-taxable territory | online recipient | territory |
|----------|-------------------------|------------------|-----------|

This situation is quite common in India. For example, a student in India registers in Netflix (US) for watching movies. Netflix becomes liable to register in India and pay IGST.

What happens where the OIDAR service provider supplies services through an intermediary?

If an intermediary located in outside India, arranges or facilitates the supply of OIDAR services, from the service provider to the non-taxable online recipient. then the **intermediary will be deemed to be the recipient of such services**. But if the intermediary satisfies the following conditions then it will **not be considered as a recipient**- (a) The invoice issued by the intermediary clearly identifies the service and its supplier in non-taxable territory (b) The intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services (c) The intermediary does not authorise delivery (d) The general terms and conditions of the supply are set by the service provider and not by the intermediary

Compulsory GST Registration for OIDAR Service Providers :-



Any person offering OIDAR services from a place outside India to a person in India other than a registered user. Needed to file GSTR -5A for providing services to unregistered or non-taxable customers in India. Rational behind including only unregistered/non-taxable service recipient is as follows:

As per Rule 64 of CGST Rules, 2017 , Registered person providing OIDAR services from a place outside India to a person in India other than a registered person shall file return in FORM-GSTR-5A on or before the 20th day of the month succeeding the calendar month or part thereof. OIDAR service providers situated outside taxable territories are expected to file a return on feeding facilities under GSTR-5A with unregistered or non taxable buyers in India. For such services, two types of service recipients exist;

A. OIDAR service recipient: Registered Person

- Registered people or businesses obtaining service from outside India are responsible for paying GST under the "Import of Service" reverse charge.
- The government has therefore collected taxes on these OIDAR Services through the Reverse charge mechanism.

- Registered recipients of OIDAR Services are responsible for including these services in their turnover and are responsible for paying GST on that amount under the system of reverse charge, and filing the returns respectively.

B. Service recipient: Unregistered individual Or Non-Taxable Person

- Non-Taxable Person or unregistered person receives OIDAR service than The service distributors are responsible for paying GST to the government. Thus, the GSTR-5A return should be filed by the service provider.

Who will register and pay GST for OIDAR services when the service provider is located outside India?

In respect of import of online information and database access or retrieval services (OIDAR) by unregistered, non-taxable recipients, the supplier located outside India will be responsible for payment of taxes. The service provider (or intermediary as the case may be) will be required to take a single registration for paying IGST under the Simplified Registration Scheme to be notified by the Government. Either he will have to take registration or he will have to appoint a person in India to pay GST. Read here for [registration process of OIDAR](#)

Does reverse charge apply in OIDAR services?

The person receiving any such services i.e. OIDAR should pay the IGST to the government only if he is registered under GST as a taxable person.

Why does OIDAR service require a treatment different from other services?

The peculiarity of OIDAR service is that it can be provided online from a remote location outside India.

- If a similar service is provided by an Indian Service Provider, from India to recipients in India then such service would be taxable.
- If such services are received by a registered entity in India then GST will be payable under reverse charge.

This gives the overseas suppliers of such services an unfair tax advantage if their services are left out of the tax net. Again, as the service provider is located overseas and might not have a presence in India, the compliance becomes difficult. So, the government has a simplified scheme of registration for such service providers located outside India.

Place of supply for OIDAR

What is the place of supply for OIDAR?

| Supply | Receiver | Place of supply |
|--|------------|---------------------------------------|
| Supply of online information and database access or retrieval services | Any person | Location of the recipient of services |

Who's a non-taxable online recipient?

"Online non-taxable recipient" means any local authority, Authority, government authority, person or some other body

- Person not enrolled and obtaining information on the Internet and
- Database access or retrieval services for any reason;
- Other than trade , industry or some other sector or occupation,
- Situated in taxable territories

What is GSTR-5A RETURN?



- The GSTR-5A form is a document containing information of the goods or services supplied by any person residing outside India to an unregistered person within India through Online Information and Database Access or Retrieval (OIDAR). For example, an person, unregistered under GST, accesses the database of any company established in london. Then, the services provided via GSTR-5A, these service providers are responsible for paying GST.
- Essentially, OIDAR service providers fill the GSTR-5A return by sign in to the GST portal to filling GST Returns. Here we have to know all about every single aspect of the GSTR-5A returns filing.

GSTR-5 vs. GSTR-5A

Basically In the both the Returns is small variation between GSTR 5 and GSTR 5A,

- **GSTR-5** : GSTR 5 is a form submitted by non-resident Indians. On the 20th of the following month, they are expected to register. The form contains all of the distribution and purchase information in the form.
- **GSTR-5A** : Whereas GSTR 5A is a return form that NRI online service providers or OIDAR (Online Information and Database Access or Retrieval) service providers who deliver their online services in India are expected to file and Income / Revenue in return.

Mandatory Compliance to be followed by non-resident for OIDAR service



3. There is no input tax credit available in GSTR 5A, so the GSTR 5A electronic cash ledger is not kept.
4. Only after payment of due taxes and all other sums due will the return is filed.
5. You cannot file a return for the current year until filing a return for the previous tax year.
6. All OIDAR service providers who are responsible for filing GSTR-5A must file GSTR-5A even though there is no business going for a tax period. Any refund balance would not be allocated to the provider in these situations.
7. As an OIDAR service provider and as a GSTIN holder, the taxpayer has to register.
8. It is also compulsory to have a correct user ID and password for a GST Portal account.
9. To submit a DSC, a valid PAN-based signature is also required.

For all non-resident taxable persons delivering the OIDAR service, it is compulsory to file the GSTR-5A return within the due date. So, if you are one of them, be sure to include the correct descriptions of your income and expenditure in order to avoid any possible tax-related complications. Keep in touch with the experts if you have any concerns.

Details to be mentioned in GSTR-5A

- Table 1: The Supplier's GSTIN
- Table 2: The Registered Person's Legal Name & Trade Name (if any)
- Table 3: Name of the Authorized Representative in India who submit the return.
- Table 4: Mention the Period, i.e. month & year for which the return is submitted
- Table 5: Taxable outward supplies rendered to Indian clients, including place of supply information, tax rate, taxable value, integrated tax and cess.
- Table 5A: Modification to taxable outward supplies rendered in India for the corresponding period to non-taxable persons.
- Table 6: Interest calculation, penalty calculation or some other amount which is payable.
- Table 7: Tax interest, late fees and all other sums payable and charged

After the successful Completion of Filing of GSTR 5A An acknowledgment is generated on the effective submission of GSTR 5A and is also transmitted automatically to the taxpayer via an email.

Due dates for filing GSTR-5A

According to the IGST ACT, GSTR-5A is to be filed by the 20th of the following month after the tax period and to which the return is relevant or to which the GST Commissioner will have to increase the time Limit. For Example, for the services rendered in the month of April 2020, GSTR 5A must be filed by 20 May 2020 at the last.

Penalty levied in case default in filing of GSTR-5A return

In the circumstance of any default in the filing of Form GSTR-5A, the following late penalty are payable—

- Normal Return- Rs. 200/day
- NIL Return- Rs. 100/day

GSTR-5A can be submitted on the GST portal only by OIDAR service providers and they must also be required to be Non-resident and make rendering aids to unregistered persons in India. As it would not be possible to file a GSTR-5A without a GSTIN and PAN.



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