



# GST Bytes..

Series 5

*An Educational Series for building GST awareness*

## Place of Supply

- Determination of Place of Supply of Goods
- Determination of Place of Supply of Services
- 'OIDAR' Services

## Place of Supply

As discussed in our previous series GST being destination based tax therefore place of supply plays a pivotal role in determining the type of tax (**IGST or CGST + SGST**) to be levied on supply of goods or services.

### 1. Determination of Place of Supply of Goods

<b>Supply of goods (other imports/ exports)</b>	In case of movement of goods - <b>place where such movement terminates</b>										
	Where goods are delivered to a person on the directions of a third party - <b>location of principal place of business of the third party</b> <b>Illustration*:</b> Location of Supplier (A) : Ahmedabad Place of delivery of goods (B) : Chandigarh Principal place of business of person who instructed deliver (C) : Udaipur Place of supply (=C) : Udaipur										
	Where the supply does not involve delivery (fixed place of asset) - <b>location of such goods at the time of delivery</b> <b>Illustration*:</b> A generator bolted to the concrete floor in the basement of a building purchased by tenant is left behind at the time of rejection of such tenancy. The activity is in nature of supply of generator from the tenant to the landlord for an agreed price. Place of supply=place where generator is bolted.										
	Where supply involves installation/ assembly of goods being supplied - <b>place of assembly or installation</b>										
	Where goods are supplied on board a conveyance - <b>place where such goods are taken on board the vehicle</b> <b>Illustration*:</b> Supply of haldirams mixtures by their sales persons during the journey										
	<table border="1"> <thead> <tr> <th>Location of supplier</th> <th>Loading of goods</th> <th>Passenger boards at</th> <th>Place of supply</th> <th>Type of tax</th> </tr> </thead> <tbody> <tr> <td>Pune</td> <td>Goa</td> <td>Hyderabad</td> <td>Goa</td> <td>IGST</td> </tr> </tbody> </table>	Location of supplier	Loading of goods	Passenger boards at	Place of supply	Type of tax	Pune	Goa	Hyderabad	Goa	IGST
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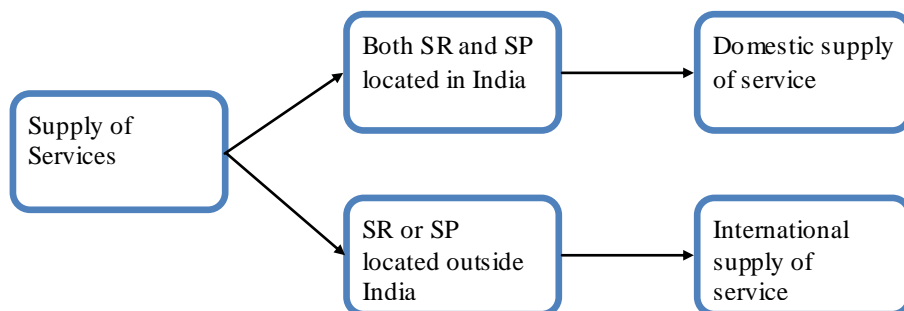
<b>Supply being Import or Export of goods</b>	<b>Imports-</b> location of the importer
	<b>Exports - location of exporter</b>

\*Source of illustrations: Background material issued by ICAI

## 2. **Determination of Place of Supply of Services**

For determining the place of provision of service, the following two concepts are important, namely:

1. Location of Service Recipient
2. Location of Service Provider



These concepts are further explained in the tables provided below

### **Determining location of the recipient of services:**

<b><u>Situation</u></b>	<b><u>Location of Recipient of Service</u></b>
a. Where a <u>supply is received</u> at a place of business for which the registration has been obtained	such place of business
b. Where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere)	such fixed establishment
c. Where a supply is received at more than one establishment, whether the place of business or fixed establishment	the location of the establishment most directly concerned with the receipt of the supply
d. In absence of such places	the location of the usual place of residence of the recipient;

### Determining Location of the Service Provider:

<u>Situation</u>	<u>Location of Supplier of Services</u>
a. Where a <b>supply is made</b> from a place of business for which the registration has been obtained	the location of such place of business
b. Where a supply is made from a <u>place other than the place of business</u> for which registration has been obtained ( <b>a fixed establishment elsewhere</b> )	the location of such fixed establishment
c. Where a supply is made from more than one establishment, whether the place of business or fixed establishment,	the location of the establishment most directly concerned with the provision of the supply
d. In absence of such places,	the location of the usual place of residence of the supplier

Based on the locations of Service Recipient and Service Provider, the general rule for determining place of supply of services is as follows:

<u>Situation</u>	<u>Place of Supply</u>
a. Domestic Transactions (Service recipient and service provider are both in India)	<p><b><u>Registered Service recipient</u></b></p> <p>In general, the place of supply for services will be the location of the service recipient</p> <p><b><u>Un-Registered Service recipient</u></b></p> <ul style="list-style-type: none"> <li>▪ Location of the service recipient (if the address is available on record);</li> <li>▪ Otherwise, <u>location of service provider</u></li> </ul>
b. International Transactions (cases other than domestic transactions)	<p>The Place of Supply for services treated as international transactions shall be:</p> <ul style="list-style-type: none"> <li>▪ The location of service recipient</li> <li>▪ In case where the location of service recipient is not available, the place of supply shall be location of the supplier.</li> </ul>

## Online Information and database Access or Retrieval ('OIDAR') services

Apart from the general rules so stated above, there have been significant changes and developments in provisions with respect to services being in nature of (OIDAR). The provisions for such services shall be construed independent of the general provisions stated above

The simplified definition of OIDAR (as clarified by ICAI) is provided as follows:

- Includes services and not goods
- Delivered over continuous internet connectivity
- Involves minimum human intervention
- Impossible to ensure in absence of information technology

### Illustrations for applicability of provisions of OIDAR services

<b>Illustration</b>	<b>Includes</b>	<b>Excludes</b>
<b>Online advertising</b> E.g. Google	Banner ads, pop-up ads, sponsored ads, etc.	<ul style="list-style-type: none"><li>• Preparation of content for online display like</li><li>• production, distribution and services of intermediaries</li><li>• Advertisement in newspaper, on posters and on television</li></ul>
<b>Data storage</b> E.g. Amazon	Webservers – shared or dedicated, with/without support, etc.	Lease of server with redundancy
<b>e-books, movies, music, software and other intangibles</b> E.g. Gaana.com & Netflix	Access to content permitted only 'online' even if stored in cache on user-end device but not allowing (official) permanent download	<ul style="list-style-type: none"><li>• movies, music, etc. which are available for offline viewing without any mandatory e-check of the user credentials</li><li>• Content provided through dedicated user-end device for use of content</li><li>• Supply of physical books, newsletter, newspaper or journals</li></ul>

Source: Background material issued by ICAI

### Special provisions for of OIDAR services

#### Case 1

Where: Service provider = person located in non-taxable territory  
Service Recipient = person being non-taxable online recipient

Then : The Service provider shall be liable for paying IGST on such services

#### Case 2

However, where such services are provided through an intermediary in non-taxable territory, then the transaction (subject to certain exception) shall be split in 2 legs:

Leg 1: The supplier in non-taxable territory providing services to the intermediary (deemed recipient)

Leg 2: Intermediary (deemed supplier) providing services to the non-taxable online recipient

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