Online information and database access or retrieval services - GST

M Mohan Sundar on 27 June 2017

Facts of the case:

Scenario - 1

The Entity is providing its own developed contents allowing the end users to:

1. Browse
2. Search
3. Download and purchase

for use on device. The Entity is the owner or Licensee of copyright in the content.

Queries:

What will be the indirect tax implication on account of providing such contents to the end users for a consideration, with regard to GST?
Scenario - 1

The Entity is selling the online database information through online (E-Commerce) which can be accessed only through Validated User ID and Password. Since the product is sold online it has been classified as goods under Information Technology products as notified by the government under TNVAT laws.

Queries:

What will be the indirect tax implication on account of providing such contents to the end users for a consideration through E-Commerce, with regard to GST?

OPINION:

'Online information and database access or retrieval services'

'Online information and database access or retrieval services' includes services such as internet advertising, providing cloud services, e-books, movies, music, software and other intangibles via telecommunication networks or internet providing data or information in electronic format via a computer network, online supply of digital content, digital data storage and online gambling.
Based on the clients' business, it is opined that they are providing **online supply of digital content to the end users** which can be classified under - 'HSN Group Code - 99843 – Online Content Services'

**Place of supply**

Under GST, there are three levels of Tax, IGST, CGST & SGST and based on the 'place of supply' so determined, the respective tax will be levied. IGST is levied where transaction is inter-state, and CGST & SGST are levied where the transaction is intra-state (within the state). For understanding Place of Supply for Services, the following two concepts are very important namely:

- location of the recipient of services
- location of the supplier of services

The place of supply for services generally will be the location of the service recipient (the recipient needs to be a registered person). In cases, where service is provided to an unregistered person, the place of supply will be the:

- Location of the service recipient (if the address is available on record);
- Otherwise, location of service provider

In case of international transaction, the location of the supplier shall be:

- The location of the service recipient
- Where the location of the service receiver is not available, the place of supply shall be the location of service provider

**The location of the service recipient in case of international transactions**

As per the deeming provision explanation for considering the location in a taxable territory if any two of the following non-contradictory conditions are satisfied:-

i. The location of address presented by the recipient of service via internet is in taxable territory;
ii. The credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory

iii. The billing address of recipient of service is in the taxable territory

iv. The IP protocol address of the device used by the recipient of service is in the taxable territory

v. The bank of recipient of service in which the account used for payment is maintained is in the taxable territory;

vi. The country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory

vii. The location of the fixed land line through which the service is received by the recipient is in taxable territory.

When the services are provided to a non taxable online recipient, it will be essential for the service provider to determine the location of such recipient to facilitate the payment of tax. The service provider therefore should ask the above information.

**Various GST rates based on the location of supplier & receiver of online database service:**

**Say tax rate is 18%**

<table>
<thead>
<tr>
<th>Scenario</th>
<th>IGST</th>
<th>CGST</th>
<th>SGST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both supplier and receiver in same state</td>
<td>NIL</td>
<td>9%</td>
<td>9%</td>
</tr>
<tr>
<td>Supplier and receiver in different states</td>
<td>18%</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>When supply of service is outside India</td>
<td>NIL</td>
<td>NIL</td>
<td>NIL</td>
</tr>
<tr>
<td>(Non taxable territory)</td>
<td></td>
<td></td>
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</tbody>
</table>
TAX rates under GST under two classifications:

According to the new GST law - following are the tax rates for the services of the entity when classified as follows:

<table>
<thead>
<tr>
<th>Service Classification</th>
<th>HSN Group Code</th>
<th>Rate of GST</th>
<th>Whether Input credit available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online Content Services n.e.c</td>
<td>99843</td>
<td>18% (Under residual services)</td>
<td>100% available</td>
</tr>
<tr>
<td>Licensing services for the right to use other intellectual property products and other resources n.e.c</td>
<td>99733</td>
<td>12%</td>
<td>100% available</td>
</tr>
</tbody>
</table>

Conclusion

Though there is no restriction for classification of services under either IPR or Online database services, based on the business of the entity being basically providing online content services it would be advisable to classify under Online Content Services which will be charged at 18%.

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