

Haryana Government
Excise and Taxation Department

Dated the 23 January, 2025

Sub: Clarification on place of supply of Online Services supplied by the suppliers of services to unregistered recipients-reg.

References have been received from field formations regarding non-compliance of provisions of mandatory recording of correct place of supply on the invoices by the suppliers in respect of online services provided by them, either themselves or through electronic commerce operators, to unregistered recipients due to wrong interpretation of provisions of section 12(2)(b) of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act") read with rule 46 of Haryana Goods and Services Rules, 2017 (hereinafter referred to as "HGST Rules"). It has also been mentioned that though in such cases of taxable online supplies of services to unregistered recipients, registered suppliers are required to mention State name of the recipient on the invoice, irrespective of the value of such supply, and declare place of supply of such services as the State of the recipient as per the provisions of clause (i) of section 12(2)(b) of IGST Act but many suppliers are not recording the State name of the unregistered recipient on the invoice and are declaring place of supply of such services as the location of the supplier as per clause (ii) of section 12(2)(b) of IGST Act. This is resulting in wrong declaration of place of supply, resulting in flow of revenue in respect of the said supply to the wrong State. Request has been made to clarify the issue so as to ensure correct declaration of place of supply by the suppliers of such services to unregistered recipients.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Commissioner of State Tax, in exercise of its powers conferred by section 168 of the Haryana Goods and Services Act, 2017 (hereinafter referred to as "HGST Act") hereby issues the following clarification.

3. Legislative provisions:

3.1 As per sub-section (17) of section 2 of the IGST Act, '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 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 through 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 and the like);
- (vi) digital data storage; and
- (vii) online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Haryana Goods and Services Tax Act, 2017 (19 of 2017);"

3.2 The term 'electronic commerce' has been defined under section 2(44) of HGST Act, as follows:

"electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;

3.3 The term 'electronic commerce operator' has been defined under section 2(45) of HGST Act, as follows:

"electronic commerce operator" means any person who owns, operates or manages digital or electronic facility, or platform for electronic commerce;

3.3 Sub-section (2) of section 12 of the IGST Act, reads as follows:

"(2) the place of supply of services, except the services specified in sub-section (3) to (14),-

(a) made to a registered person shall be the location of such person;

(b) made to any person other than a registered person shall be,-

(i) the location of the recipient where the address on record exists; and

(ii) the location of the supplier of services in other cases."

3.5 As per sub-section (2) of Section 31 of the HGST Act

"(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed."

3.6 Rule 46 of HGST Rules provides as below:

"46. Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,-

...

(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is unregistered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;

Provided that in cases involving supply of online money gaming or in cases that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient;

.....”

4. Clarification:

4.1 Section 12 of the IGST Act provides that except in cases specified in sub-sections (3) to (14) of the said section, when the services are supplied to a registered person, the place of supply of services shall be the location of the recipient and **when the services are supplied to an unregistered person, the place of supply of the said services shall be the location of the recipient, if his address is available on record**, and shall be the location of the supplier, if the address is not available on record.

4.2 Section 31(2) of the HGST Act provides that a registered person providing taxable services must issue a tax invoice with details like the service description, value, tax charged and such other **particulars as may be prescribed**.

4.3 Rule 46 of HGST Rules provides the particulars required to be mentioned on the tax invoice. Clause (f) of the said rule provides for mentioning some details on the invoice in case of supplies made to unregistered recipient. Further, proviso to clause (f) of rule 46 of the HGST Rules provides that in cases involving the supply of online money gaming or involving supply of any taxable services by or through an electronic-commerce operator or by a supplier of online information and database access or retrieval services, to an unregistered recipient, irrespective of the value of the said supply, the tax invoice issued by the registered supplier must contain the recipient's State name. It has also been provided in the said proviso that such State name shall be deemed to be the address on record of the recipient.

4.4 A conjoint reading of clause (b) of sub-section (2) of Section 12 of the IGST Act, sub-section (2) of Section 31 of the HGST Act and proviso to rule 46(f) of HGST Rules leads to a conclusion that in respect of supply of services made to unregistered persons, irrespective of the value of the said supply, the supplier is required to mandatorily record the name of the State of the unregistered recipient on the tax invoice, in cases involving supply of online money gaming or

supply of taxable services by or through an electronic commerce operator or supply of online information and database access or retrieval (OIDAR) services. Recording of the name of State of the unregistered recipient on the tax invoice in respect of such supply of services shall be deemed as the address on record of the recipient for the purpose of determination of place of supply of the said services under section 12(2)(b) of IGST Act. Accordingly, in such cases, the place of supply of such services shall be considered as the location of the recipient of the services as per provisions of clause (i) of section 12(2)(b) of IGST Act.

4.5 It is also observed that a combined reading of the definitions of 'electronic commerce' and 'electronic commerce operator' as per section 2(44) and section 2(45) of HGST Act, along with rule 46(f) of HGST Rules, leads to an understanding that all services supplied to unregistered recipients over digital or electronic network, either by the supplier using his own digital or electronic facility/platform or through any other electronic or digital platform owned and operated by an independent electronic commerce operator, will be covered under proviso to rule 46(f) of HGST Rules.

4.5.1 It is, accordingly, clarified that provisions of proviso to rule 46(f) of HGST Rules shall be applicable in respect of all the online supplies of services supplied to an unregistered recipient, in addition to the supply of online money gaming and OIDAR services. Some of the examples of such services are subscription of e-newspapers and e-magazines, online subscription of entertainment services (e.g. OTT platforms), online telecom services, digital services through mobile applications etc. Therefore, in respect of supply of any such online/ digital services, OIDAR services and online money gaming to unregistered recipients, the suppliers are mandatorily required to record the name of the State of the recipient on the tax invoice, irrespective of the value of supply of such services, and to declare place of supply of the said services as the location of the recipient (based on the name of State of the recipient) in their details of outward supplies in FORM GSTR-1/1A.

4.5.2 For the purpose of recording the name of the State of the recipient on tax invoice in respect of such supplies made to unregistered persons for such online services, supplier should devise suitable mechanism to ensure collection of such details from unregistered recipient before making any supplies to him. As mentioned above, in such cases, the name of the State of the recipient so recorded shall be deemed to be the address of recipient available on record and thus, for determining place of supply of the said services, provisions of section 12(2)(b)(i) of IGST Act will be applicable as per which the place of supply shall be the location of the recipient.

4.5.3 It is also mentioned that if the supplier fails to issue invoice in accordance with the said provisions by not recording correct mandatory particulars, including recording of name of State of

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unregistered recipient in respect of such supplies, he may be liable to penal action under the provisions of section 122(3)(e) of HGST Act.

5. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Department.

Dated: 20/01/2025
Place:- Panchkula

Ashok Kumar Meena
Excise and Taxation Commissioner-cum-
Commissioner of State Tax, Haryana

No. 100 /GST-II,
Panchkula, Dated the 23/01/2025

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Dy. Excise and Taxation Commissioner (GST),
Haryana, Panchkula.