



Section 13 of IGST Act



Section- 13

Place of supply of services where location of supplier or location of recipient is outside India.

- (1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.
- (2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.



(3) The place of supply of the following services shall be the location where the services are actually performed, namely:-

- (a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

~~Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs~~

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process

Substituted vide Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f 01-02-2019



- (b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.
- (4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.
- (5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.
- (6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.



- (7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.
- (8) The place of supply of the following services shall be the location of the supplier of services, namely:--
- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
 - (b) **intermediary services;**
 - (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.



Explanation.--For the purposes of this sub-section, the expression,--

- (a) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- (b) “banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934; (2 of 1934.)
- (c) “financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934; (2 of 1934.)
- (d) “non-banking financial company” means,--
 - (i) a financial institution which is a company;
 - (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
 - (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.



- (9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.
- (10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.
- (11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.
- (12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.



Explanation.--For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:--

- (a) the location of address presented by the recipient of services through internet is in the taxable territory;
- (b) 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 services settles payment has been issued in the taxable territory;
- (c) the billing address of the recipient of services is in the taxable territory;
- (d) the internet protocol address of the device used by the recipient of services is in the taxable territory;
- (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
- (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
- (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.



(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service..



Meaning of Intermediary: Section 2(13) of IGST Act - Section-13(8)(b)

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;



Important Legal Important legal pronouncements on intermediary

1. **Five Star Shipping AAAR Maharashtra**: Where the applicant had entered into consultancy agreement with foreign ship owner (FSO) for supply of Marine Consultancy Services (MCS) and appellant was actually facilitating the supply of main services i.e chartering of vessels by FSO to their clients i.e charterers. It was held that they are acting as an intermediary.
2. **Global reach education services (P) Ltd.(AAAR West Bengal)**: The appellant promotes the courses of foreign university in India, finds prospective suitable students to undertake courses, and in accordance with the university procedures and requirements recruits and assists in recruitment of suitable students. Held that it is an intermediary service.
3. **Mrs Vishakhhar Prashant Bhve(AAR Maharastra)**: The Applicant is carrying on trading business in laboratory Equipments Instruments and other related activity such as servicing, repair and maintenance of laboratory equipment's/ Instruements. It provides services to its principals at Germany by way of procuring purchase orders from the parties in India. Held that he is an intermediary.



4. **Travel Network India (P) Ltd. (AAR Maharashtra) Maharashtra**: The applicant is wholly owned subsidiary of Sabre Asia Pacific Pte. Ltd. , A leading provider of travel solutions and services across the Globe. Sabre GBL Inc. , an affiliate of Sabre APAC and Sabre India , has developed a global distribution system. The task of Indian entity was to identify the subscribers to that service. It was held that they are also an intermediary.
5. **Toshniwal Brothers(SR) (P) Ltd. (AAR Karnataka)** ; The applicant was engaged in the business of promotion and marketing and after sale support services for scientific instruments for overseas supplier. The applicant was receiving a commission for this activity . The overseas supplier kept the right to accept or reject the contract, but it should inform the decisive reason to applicant. Held that these services are of intermediary nature.
6. **Vserve Global (P) Ltd. (AAR Maharashtra)**: The applicant was providing the back office support services to overseas companies engaged in trading of chemicals and other products in international trade. Held that it is an intermediary services and PoS is in India.





Section 14 of IGST Act

S 14(1)

In case of Supply of OIDAR services -
By a Supplier in Non- taxable territory to a non-taxable online recipient ,
Such supplier shall be liable to pay IGST.

Proviso - if there is an intermediary B/w such supplier & recipients,
then intermediary shall be deemed to be the supplier of OIDAR services.

Except -

- (a) Invoice/Bill/receipt clearly identifies Service & its actual Supplier located in non-taxable territory
- (b) Intermediary neither collects or processes payment
- (c) Intermediary doesn't authorize delivery
- (d) General TnC of supply are not set by intermediary

S 14(2)

Supplier of OIDAR services u/s 14(1) for payment of IGST, shall obtain a single registration

Proviso 1: if a person located in taxable territory represents Such Supplier then that person shall be liable to get registered

Proviso 2: if such supplier doesn't have physical presence nor have any representative then such supplier shall appoint an person in taxable territory who will pay taxes on his behalf.



Section- 14

Special provision for payment of tax by a supplier of online information and database access or retrieval services

- (1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non- taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely



- (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
- (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that 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 involved in the supply does not authorise delivery; and
- (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.



- (2) The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.



Related Rulings

Intermediary	Toshniwal Brothers (Karnataka) Promotional and Marketing services	Promotional and Marketing services For a foreign company is intermediary.
	Five Star Shipping (Maharashtra)	Collecting the market intelligence information is also is intermediary.
	Vserve Global (Maharashtra)	Back office services for foreign client is intermediary.
	Global Reach (West Bengal)(AAR & AAAR)	Selling the courses for the foreign university.
Section 13(3) of IGST Act	Sigoma Imaging Technologies	Clicking of the pics of the goods provided by the clients of the recipient will not be export (PoS = India).
	Cliantha Research Private limited	Conducting medical tests on drug provided by the clients of the recipient will not be export (PoS = India).

