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## **FOREIGN ONLINE SERVICE PROVIDERS AND INDIA'S GOODS AND SERVICES TAX (GST) LAW**

The present business world mostly operates on the internet. The supply of online services such as music, movies, books, games, data storage/exchange, etc., is booming all over the world. Although such services can be provided from anywhere in the world, they may result in cross border transactions attracting tax liabilities in India. India's Integrated Goods and Services Tax (GST) Act, 2017 (the "GST Act"), effective 1 July 2017, mandates GST payment on online services provided in India by the Foreign Online Service Providers (the "FOSPs").

The GST Act defines the services exchanged over the internet as the "Online Information and Database Access or Retrieval Services" (the "OIDAR Services"), and has included, under its ambit, a non-resident taxable person who supplies goods or provides services (including online services), whether as principal or agent or in any other capacity and has no fixed place of business or residence in India. [Section 2 (77) of the *Central Goods and Services Tax Act, 2017 (the "CGST Act")*]

The GST Act mandates the FOSPs (i.e., non-resident taxable persons) to obtain a GST registration by filing an online application at least five (5) days prior to the date of commencement of business in India. Although the GST Act was implemented since 1 July 2017, the Indian Government has only recently introduced the GST registration application form for FOSPs.

However, currently there are certain procedural ambiguities and compliance difficulties faced by the FOSPs providing services in India, as follows:

- The current GST registration procedure mandates an FOSP to get separate GST registration for each Indian State in which it intends to provide its services.
- The GST Act prescribes that if an FOSP does not have a physical presence in India, it must appoint an authorized signatory in India who will be responsible for filing the GST registration application and for making the GST payment to the Indian Government. Such authorized signatory must be a resident of India and must have a valid permanent account number (Indian tax identity) in India. [Section 24 of the *CGST Act and Rule 13 of*

*the Central Goods and Services Tax Rules, 2017 (the "CGST Rules")*]

In case of foreign entities supplying their goods or services to the Indian consumers through a distributor in India, such distributors will be liable to obtain registration and pay the GST. Whereas, the FOSPs, which provide online services directly to the Indian consumers, will have to appoint someone in India for compliance with the GST Act. Further, if an FOSP intends to provide its services in more than one Indian States, a single authorized signatory can obtain multiple GST registrations in each of those Indian States on behalf of the FOSP.

- The current GST registration procedure mandates the FOSPs to have a physical place of business (through an agent or authorized signatory) in India through which it will provide its services. Such physical place of business must be within the Indian State in which the GST registration is applied. This implies that if an FOSP intends to provide its services to more than one Indian States, it must have a physical place of business (belonging to its agent or authorised signatory) in each of those States. This mandate may be cumbersome for the FOSPs.
- A GST registration is valid for only ninety (90) days, which can be renewed only once, i.e., for a further period of ninety (90) days. If an FOSP wishes to continue to provide online services in India for more than the aforesaid period, it will have to re-apply for a fresh GST registration.
- The Indian Government has not as yet allotted a GST slab rate for the OIDAR services received in India. Therefore, the GST slab rate cannot be ascertained at this stage.

Further, an FOSP's failure to obtain the GST registration will attract a penalty of INR 10,000 (USD 153 approx.) or an amount equivalent to the GST unpaid.

In view of the foregoing issues, it is anticipated that the Indian Government will adopt steps to resolve these ambiguities in the coming days.

In the meantime, all the FOSPs must be aware that they fall under the ambit of India's GST and that the registration is mandatory.

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