

Place of Supply [Section 10, 11, 12, 13, 14 of IGST Act read with Rules] (1/4)

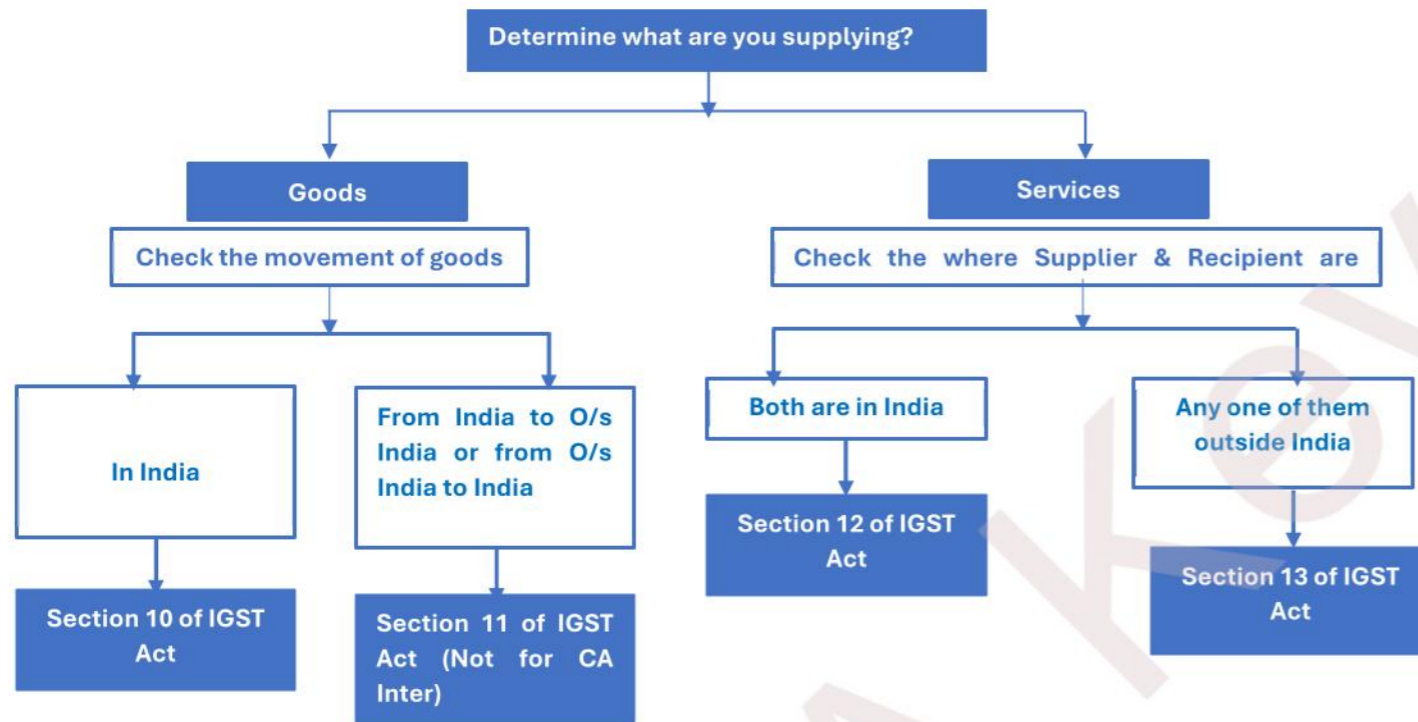
BACKDROP OF PLACE OF SUPPLY

GST is understood as a “Destination-Based Consumption Tax’ but there is no provision that declares this fact. Destination based consumption tax means the revenue would accrue to that state in which the goods or services are consumed. It is here in Place of Supply that we find that the destination principle of GST is fully captured (*except 3 services as enumerated in section 13(8) of IGST Act – discussed later*). The law maker has declared, in each case of supply, its destination of supply.

RELEVANCE OF PLACE OF SUPPLY: -

The relevance of place of supply can be understood as below: -

- (i) Determining Nature of supply & Kind of Tax
- (ii) Helpful in Government Settlements
- (iii) Determining Exports of Goods or Services



BY CA Keval Mota

Section 10(1): - The place of supply of goods in case of domestic transactions, other than supply of goods imported into, or exported from India (For Import of goods & Export of goods Section 11 applies)

Section	Description	Place of Supply
10(1)(a)	Supply involves movement of goods whether by supplier / recipient or any other person.	Location of delivery [In case of Ex-factory delivery – Location of recipient as per address in invoice]
10(1)(b)	Goods are delivered on the direction of a third person. (Bill to Ship to Model) [B to A] A – Third person B – Supplier C – Recipient	Location of third person Interlinking: - ❖ This provision is exception to receipt of goods condition in ITC chapter. ❖ A to C – Section 10(1)(a)
10(1)(c)	Supply does not involve movement of goods	Location of such goods at time of delivery (Examples – Sale of Asset in Finance Lease, Sale or return basis / hire-purchase)
10(1)(d)	Goods are assembled, or installed at site	Location of such installation or assembly
10(1)(e)	Goods are supplied on board a conveyance, including a vessel, an aircraft, a train, or a motor vehicle.	Location where goods are taken on board.
10(1)(ca)	Supply of goods to unregd. person [It overrides section 10(1)(a) & 10(1)(c)]	❖ If LOR available - LOR ❖ If not available – LOS ❖ If billing address is different from shipping address – Shipping address is place of supply [Circular]

Sec 11: - POS for Import & Export of Goods –

Import means bringing goods into India from a place outside India.

Export means taking goods out of India to a place outside India.

Import of Goods & Export of goods are inter-state supplies.

Sec 11(a)	Import of Goods (IGST is levied as per S. 3(7) of Customs Tariff Act, 1975)	Location of Importer [If goods are cleared through other than regd. place of business, still location of importer will be place of supply]
Sec 11(b)	Export of Goods (Zero-Rated supply as per S. 16 of IGST Act)	Location Outside India

Place of Supply [Section 10, 11, 12, 13, 14 of IGST Act read with Rules] (2/4)

Section 12 of IGST Act is applicable only when location of supplier of SERVICE and recipient of SERVICE is in India.

Section	Description of Service	PoS when supplied to URP	PoS when supplied to RP
12(2)	Default Rule for all services except 12(3) to 12(14)	i) Address in record exists – LOR [As per rule 46, mandatory recpt. add should be available for OIDAR Services] ii) Address in record do not exists – LOS	PoS location of such registered person
12(5)	Services in relation to Training & Performance appraisal	Actual Place of performance	
12(7)	Event Management Services or assigning of sponsorship to such events.	If held in India: - Place where event is actually held. If held O/S India: - LOR	
12(8)	Transportation of goods including mail or courier.	Place where goods are handed over for their transportation	
12(9)	Passenger transport service	Place where passenger embarks on the conveyance for continuous journey (If point of embarkation is not known then 12(2) shall be applicable)	
12(13)	Insurance service	LOR of service in records of insurance company	
12(3)	Service directly related to immovable property like agents, architect experts, renting of immovable property, lodging in hotels, inn, accommodation for functions & including house boat or any other vessel	Immovable Property/ house boat/ vessel Located in India: Location (intended location) of immovable prop. Immovable Property/ house boat/ vessel Located O/S India: LOR	
12(4)	Restaurant & catering, personal grooming, fitness, beauty treatment, health services including plastic surgery	Place where service is actually performed.	
12(6)	Admission to event	Place where event actually held or park is located.	
12(10)	Services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle	Location of the first scheduled point of departure	
12(11)	Telecomm services including data transfer, broadcast, cable or DTH (a) Fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna	(a) Location of installation	
	(b) Post-paid mobile, internet, DTH (c) Pre-paid vouchers - Through selling agent, distributor of SIM Card - By any person to final subscriber	- Billing Address - Address of selling agent as per record of supplier. Location where such pre-payment is received / such vouchers are sold.	
	Proviso - Prepaid – electronic Payment	LOR	
	In other cases: - - Add of recipient in records of supplier is available. - Where such address is not available	Address of recipient as per records of supplier. Location of supplier of service.	
12(12)	Banking & Financial Sector including stock broking	LOR if address available in records of supplier else, LOS	
12(14)	Advertisement services to CG/SG/Statutory body/LA/UT (Refer Rule 3 on Next Page)	Value in each of such state/UT where advertisements broadcasted run, played.	

POS for Advertisement Services [Circular No. 203/15/2023-GST dated 27th October, 2023]:

Nature of service	Place of supply
Hoarding on Land or Structure erected on Land	Supply of Space on Hoarding (Immovable Property). If the hoarding or structure is fixed/embedded in the earth, it is treated as immovable property. Place of supply is governed by Section 12(3)(a) of IGST Act — i.e., the location of the hoarding. This applies when there is a sale of space or grant of rights to use space for advertisement.
Services provided by Vendor to Advertisement company for display of the advertisement	If the vendor does not transfer rights or space, but only displays ads on a structure he owns or rents, it's not a supply of immovable property. It is considered a pure advertisement service. Place of supply is governed by Section 12(2) of IGST Act — i.e., location of the recipient of service.
POS for Co-location data centre	Co-location is a data centre facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services. POS shall be determined as follows: ❖ Co-location service with components of hosting such as air conditioning, security service, fire protection system: Section 12(2) applicable ❖ Co-location service without components of Hosting (just physical space with basic infra): Section 12(3) applicable

Section 13 of IGST Act is applicable for services when LOS or LOR any one of them is O/S India

Section	Service	PoS
13(2)	All services other than covered in 13 (3) to 13(13) default rule	If LOR available: - LOR If LOR is not available: - LOS
13(3)	(a) Services supplied on goods made physically available by recipient of service (b) Service supplied to individual, represented either as recipient of service / person acting on behalf of recipient which require physical presence of recipient or person acting on behalf of recipient, with service supplier.	Place of performance Exceptions: - i) Electronic Means: - Location of Goods at Time of supply ii) Imported temporarily for repairs or for any other treatment or process exported without use in India - POS 13(2) LOR

Departmental Clarifications in relation to Section 13(3) of IGST Act:

- (i) **Clarification of Place of Supply in case of pharmaceutical sector (Notification No. 04/2019- Integrated Tax w.e.f. 1st October, 2019)**
POS for certain services in pharma sector such as Integrated discovery & development, Bio-equivalence shall be the location of the recipient of services (and not where performed) if services from the taxable territory are provided as per a contract.
- (ii) **Clarification regarding determination of POS in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry**
❖ If developing and designing is the principal supply then the place of supply for testing of kits would be location of recipient (not place of performance)
❖ If testing of kits provided physically by recipient of service is the principal supply, then place of supply would be place of performance.
- (iii) **POS for cutting and polishing activity on unpolished diamonds** which are temporarily imported into India which are not put to any use in India, would be LOR [CBIC vide Circular No. 103/22/2019-GST]
- (iv) **Place of supply for “Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines, vessel and other aircraft components or parts supplied to a person for use in the course or furtherance of business”** would be LOR

Place of Supply [Section 10, 11, 12, 13, 14 of IGST Act read with Rules] (3/4)

Section 13 of IGST Act is applicable for services when location of supplier or location of recipient is outside India (any one of them is outside India)

Section	Service	PoS
13(4)	Supply of service directly on immovable property [like 12(3)]	Location of Immovable Property (or intended location)

Departmental Clarification:

Vide Circular No. 103/22/2019-GST dated 28th June, 2019, CBIC clarified that cargo handling services are not related to immovable property thus POS shall be as per 12(2) or 13(2).

13(5)	Admission/Organisation to events including ancillary services.	Place where event is actually held
13(6)	Supply of service u/s 13(3), (4), (5) in multiple location including location in Taxable territory.	Taxable territory. Entire contract in taxable territory.
13(7)	Supply of service u/s 13(3), (4), (5) more than 1 state/UT (Refer Rule 7, 8, 9 respectively)	As per value of supply of service in each respective State as per contract or agreement In absence of contract IGST Rules to be considered.
13(8)	Services Supplied by: - 1) Banks/FI/NBFC to A/c holders Circular: 'Custodial Services' in relation to securities means safekeeping of securities of a client and providing services incidental thereto. POS shall be as per 13(2) and not as per 13(8)(a) 2) Intermediary services <i>Note: - Sub contracting of a service is not an intermediary service</i> 3) Hiring all means of transport (incl. yacht) other than vessel or aircraft up to 1 month. (For vessel & aircraft S. 13(2) applies irrespective of period of hire)	Location of supplier of Service.
13(9)	Removed	

Departmental Clarification:

Taxability of satellite services provided by ANTRIX Corporation Limited to (Circular 2/1/2017 – IGST dated 27/09/2017): -

❖ Customers Located Outside India – POS would be as per Section 13(2) of IGST Act & such supplies will be zero-rated services as per Section 16 of IGST Act, 2017

Example: ANTRIX launches a satellite for NASA (USA) from India. As the recipient is located outside India, Section 13(2) applies. The service qualifies as export of service and is zero-rated under Section 16 of IGST Act. ANTRIX can supply without GST under LUT or pay IGST and claim refund.

❖ Customers Located in India – POS would be determined as per Section 12(8) of IGST Act, 2017 would be taxable.

Example: ANTRIX launches a satellite for an Indian tech startup (Bangalore-based). As the recipient is located in India, Section 12(8) applies. The service is taxable, and GST is charged (IGST or CGST+SGST). ANTRIX must issue a tax invoice and pay GST accordingly.

13(10)	Passenger transport service	Place where passenger embarks for continuous journey
13(11)	Services provided on board	First scheduled point of departure
13(12)	Online Information Database Access or Retrieval Service	Location of Recipient

Rule 3 – Mode of Advertisement	Basis of Proportion in each State / UT
a) Newspapers and publications	Amount Payable for Publication in each state
b) Printed Material like pamphlet, leaflets, diaries, t-shirts and the like	Amount payable for the distribution of specified number of such printed material
c) i) Hoardings (other than those on trains)	Amount payable for the hoardings
ii) Advt. on trains	Proportion to the length of the railway track
d) i) Back of utility bills	number of consumers having billing addresses in such State/UT
ii) Railway Tickets	proportion to the number of railway stations
e) Radio stations	Amount payable to each radio station
f) Television channels	Viewership as per Broadcast Audience Research Council for last week of quarter.
Viewership figures relate to a region comprising of more than one State/UT	Ratio of populations in those States/UTs as per the last census.
g) Cinema Halls or screens in Multiplex	Amount payable to cinema hall or screens in multiplex.
h) Internet	Number of internet subscriber figures published by TRAI for the last quarter of the immediately preceding financial year.
Internet subscribers' figures relate to a region comprising of more than one State/UT	Ratio of populations in those States/UTs as per the last census.
i) SMS	Number of telecom subscriber figures published by TRAI for the immediately preceding quarter
Fig. of Telecom subscribers relate to a telecom circle comprising of more than one state or UT	Ratio of populations in those States/UTs as per the last census.

Rule No	Type of Service	Basis
4.	Lodging accommodation (except located in two or more contiguous States or Union territories or both) [S.12(3)]	Number of nights
4.	Where such property is a single property located in two or more contiguous States or UT or both (except house boat or any other vessel) [S.12(3)]	Area of the immovable property lying in each State or Union territory
4.	Lodging accommodation by a house boat [S.12(3)]	Time spent in the boat or vessel in each such State or Union territory
5.	Event management services referred under 12(7)	Generally Accepted Accounting principles
6.	Leased circuit where the leased circuit is installed in more than one State or Union territory [12 (11)]	In proportion to the number of points lying in the State or Union territory The number of points in a circuit shall be determined in the following manner. a) Start point and end point be treated separate b) Intermediate point is also a point.
7.	❖ Supply of services in respect of goods which are required to be made physically available ❖ Services supplied to an individual which require the physical presence, etc. covered by 13(3) of IGST Act, 2017	a) Services supplied on the same goods , by equally dividing the value b) Services supplied on different goods , by taking the ratio of the invoice value of goods on which service is performed c) Services supplied to individuals , by applying the GAAP .
8.	For 13(4) – Rule 8 applies like Rule 4	
9.	For 13(5) – Rule 9 applies like Rule 5	

Place of Supply [Section 10, 11, 12, 13, 14 of IGST Act read with Rules] (4/4)

Meaning of OIDAR Services

As per Section 2(17) 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 and **impossible to ensure in the absence of information technology** and includes electronic services such as advertising on the internet, providing cloud services, provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet etc.

Online money gaming as defined in 2(80B) of CGST Act shall not be treated as OIDAR service.

"Non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval services located in taxable territory. (TDS deductor shall be deemed to be unregistered person)

[In case where person is providing online money gaming services from outside India, he shall be liable to be registered in India for the purpose of payment of tax. He shall be registered in Bangalore & shall follow section 14A of IGST Act. Further, where such person is not located in taxable territory, he shall appoint representative to pay tax. However, if there is no representative, then he shall appoint the agent for the purpose of payment of tax.]

Clarification on Advt. services to foreign clients & data hosting

Principal-to-Principal (P2P) Model: When an Indian advertising agency provides end-to-end advertisement services to a foreign client (including media planning, content creation, space booking), it is not considered an intermediary. **Place of Supply (POS): 13(2) i.e., LOR (export subj. to conditions)**

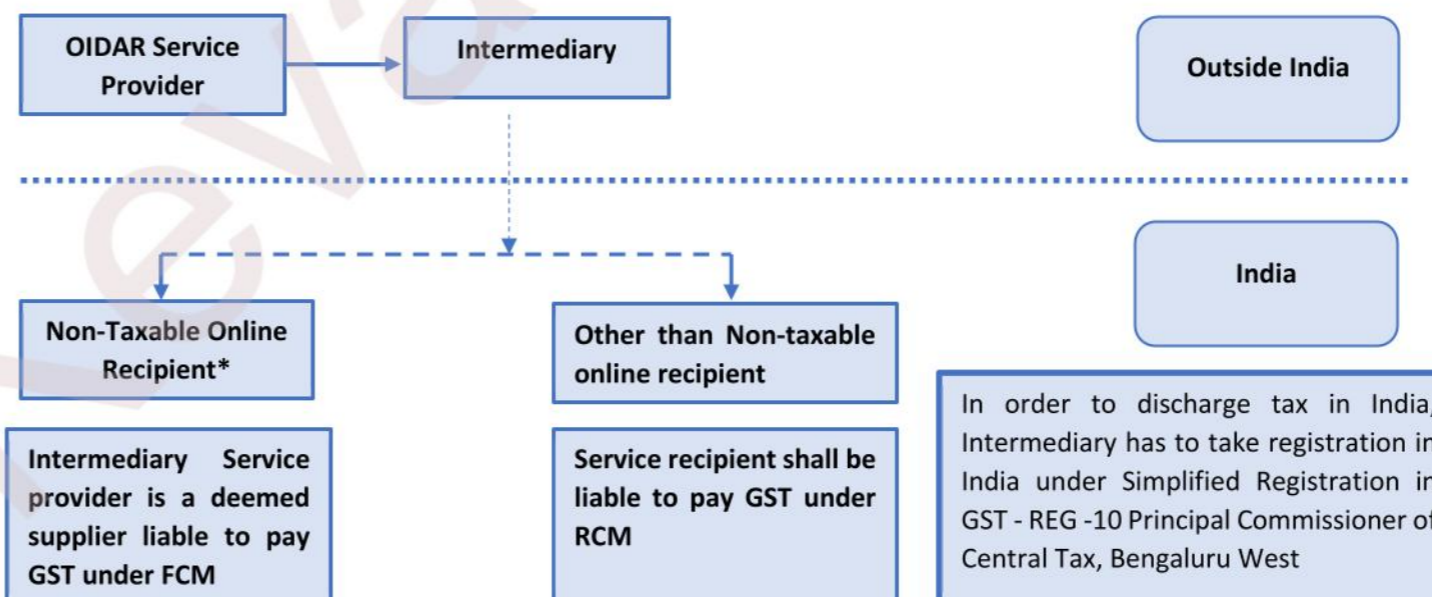
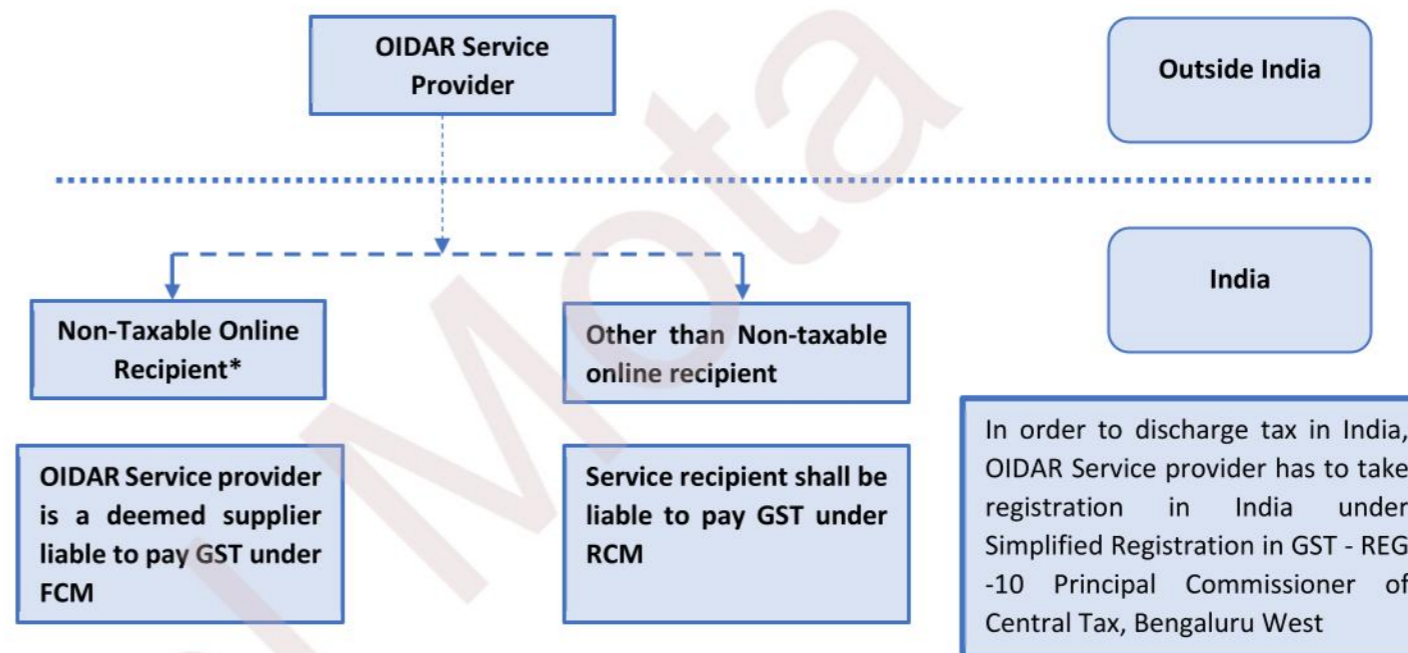
Non-Applicability of Section 13(3): These advertisement services do not fall under Section 13(3) (performance-based services), as there is no physical performance or involvement with goods within India.

Indian Audience or Representatives Irrelevant: The location of the target audience or presence of a representative in India does not affect the place of supply, which remains outside India.

Intermediary Situation (Exception): If the Indian agency only facilitates media buying and the media space is directly billed by media companies to the foreign client; the agency is treated as an intermediary. In such cases, POS becomes the location of the supplier (India), and GST is applicable.

Clarification on Data Hosting: Data hosting services are treated as services provided on the provider's own account and not as intermediary services, so Section 13(8)(b) does not apply. These services do not involve goods being physically made available to the supplier; hence Section 13(3)(a) is also not applicable. Additionally, since data hosting is a composite supply involving infrastructure, software, security, and power, it is not considered a service related to immovable property under Section 13(4). Therefore, the place of supply for data hosting services is determined as per Section 13(2), i.e., LOR

Taxability of OIDAR Services



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. However, if following (all) conditions are satisfied then, **INTERMEDIARY WOULD NOT BE TREATED AS SUPPLIER: -**

- 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;
- The intermediary involved in the supply does not authorize 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;
- The intermediary involved in the supply does not authorize delivery; and
- The general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.