

## **GST Implications on Incomes earned by YouTuber Creators**

- Contributed by CA Sri Harsha

YouTube is undoubtedly the TV for the millennials. I was recently at a family gathering and was talking to the NexGen kids about what they want to become when they grow up. To my surprise, one of them said, he want to become a YouTube creator. I said, that is fine, but, what do you want to do full-time? He has not changed his response. He said he wants to create content as a full-time job and post it on YouTube. No doubt, many of you who are reading this piece of article would have also got the same response in your gatherings. The immediate question that arises, if someone wants to pursue this as full time, will they be earning which is normally equivalent to a full time conventional job? I did a bit research and understood that in 2020, YouTube has paid Rs 6,800 Crores to YouTube Creators in India as part of their YouTube Partner Program (for brevity 'YPP'). That roughly translates to 6.84 lakh full time jobs<sup>1</sup>. The numbers are astronomical, both the revenues earned and the YouTube Creators. Maybe we have all taken a wrong job (pun intended).

YouTube pays the content creators in 10 different ways<sup>2</sup>. The significant portion among all the pay-outs by YouTube is the advertisement revenue. Once the content creator meets the threshold set by YouTube, he will be in a position to monetise his videos. YouTube pays roughly 55% of the advertisement revenue to the content creators and retain the balance.

In this piece, we are only dealing with the tax implications on the share of advertisement revenue that is paid out by YouTube to content creators. Let us understand the tax implications by taking a case study. Mr Bored is an individual is a YouTube content creator located in India. He updates original content every week and has a huge subscriber base. He has qualified for the benefits under YPP and he was being paid by YouTube on a monthly basis, share of advertisement revenue, let us say, Rs 2 lakhs.

The modus operandi is simple. Mr Bored creates a video. Uploads into his channel. Selects that the video is open for monetisation. YouTube based on its ads algorithm<sup>3</sup> plays advertisements in the video posted by Mr Bored. YouTube collects money from advertisers as per their agreement. YouTube pays Mr Bored, a part of such advertisement revenue.

Mr Bored earns Rs 24 lakhs per the entire year. The question that arises for consideration is, what are the implications on the income earned by Mr Bored from the perspective of GST laws<sup>4</sup>. Let us proceed to analyse the same.

In order to understand the tax implications, it is a pre-requisite to understand, as to, what is the nature of supply, who is the supplier, who is the recipient, what is the location of supplier, what is location of recipient and finally, where is the place of supply.

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<sup>1</sup> <https://dazeinfo.com/2022/03/04/indian-youtube-channels-doubling-in-less-than-2-years/>

<sup>2</sup> <https://blog.youtube/news-and-events/10-ways-monetize-youtube/>

<sup>3</sup> <https://support.google.com/youtube/answer/9269689?hl=en>

<sup>4</sup> Central Goods and Services Tax Act, 17, State Goods and Services Tax Act, 17 & Integrated Goods and Services Tax Act, 17

**Determination of Nature of Services provided by YouTube:**

As discussed earlier, Mr Bored uploads the content he made for the view of general public who uses the YouTube. If he meets the threshold set by YouTube, he will be eligible for monetisation and YouTube shares the advertisement revenue. At this juncture, it is important to understand, the nature of service provided by YouTube. The core functionality of YouTube is allow users to share the videos. It is an online video sharing platform. Hence, Mr Bored was provided with a platform, which allows him to upload the videos, so that subscribers can watch the content.

YouTube is the provider of service, that is allowing access to Mr Bored to upload his videos. Mr Bored is the recipient of said service. As discussed earlier, Mr Bored is located in India and YouTube is located outside India. Therefore, we have identified the supplier, the recipient and locations thereof. Now, we have to examine, what is the nature of service provided by YouTube to determine the place of supply.

We shall revert to the determination of service provided by YouTube in a moment. Before that, we have to understand, what is the role played by the place of supply vis-à-vis taxation. The determination of place of supply of a service is crucial in arriving the taxability.

If the location of recipient of supply is outside India, the location of supplier is in India and the place of supply is outside India, then there is no taxability under the IT Act<sup>5</sup>, because it qualifies as zero rated supply in terms of Section 16 of IT Act. Accordingly, if the supplier files a letter of undertaking (for brevity 'LUT') and exports the services under the cover of LUT and satisfies other attached conditions, the supply can be called as export of services and no tax is required to be paid. A classic example of this scenario is, the information technology services provided by a software company located in India to a company located outside India.

On the other hand, if the location of supplier of service is outside India, the location of recipient is in India and the place of supply is within India, then there is a tax liability in the hands of the recipient of supply, famously called as tax under reverse charge mechanism (for brevity 'RCM'). A classic example of this scenario is, a software company purchasing certain software subscription from a person located outside India. In such case, the software company located in India, is obliged to pay tax on the purchase value under RCM and allowed to avail the tax paid as credit, subject to other conditions.

There may be another scenario, where the recipient of service is located in India, the location of supplier of service is outside India and the place of supply of service is outside India. In such case, the recipient of service is not obligated to pay tax under RCM, since the place of supply is not in India. A classic example of this scenario is, services provided by a commission agent located outside India. The Indian company pays him commission for the sales, the intermediary has referred. Since, the place of supply of such intermediary service is the location where he resides (as per the provisions of determination of place of supply), there would not be any obligation on the Indian company to pay tax under RCM.

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<sup>5</sup> Integrated Goods and Services Tax Act, 17

A final scenario, where the location of supplier of service is in India, the location of recipient of supply is outside India, but the place of supply is India, then the supplier located in India is supposed to pay tax under forward charge. In other words, it is as good as a domestic service provided by the supplier located in India. The supplier may be in receipt of convertible foreign exchange, but still, he is obliged to pay tax. A classic example of this scenario is, services provided by an Indian company in relation to overhaul of aeroplane, belonging to a person located outside India. Since, the place of supply of such repair services is the location where the repair has been undertaken, that is India (as per the provisions of determination of place of supply), the services provided becomes taxable.

Hence, the determination of place of supply is very crucial and has a direct impact on the determination of tax of such supply. The place of supply is dependent upon the nature of service involved. Section 13 of IT Act provides for determination of place of supply, when the location of supplier or recipient of supply is located outside India. It becomes necessary to examine the provisions of Section 13 to determine the place of supply of services provided by YouTube, since YouTube is located outside India.

The general rule under Section 13 is, the place of supply of services is the location of recipient of services. However, this general rule comes into trigger only, when the services do not fall under sub-clauses (3) to (13) of Section 13. Hence, if we rule out that, the services provided by YouTube does not fall under any sub-clauses of (3) to (13) of Section 13, then the location of recipient of services, that is Mr Bored, will be the place of supply. Hence, let us proceed to examine, under which sub-clauses of Section 13, the services provided by YouTube would fit in.

A survey of the sub-clause (3) to (13) of Section 13 would indicate that, Section 13(12), is the one relevant in the current context. Section 13(12) deals with place of supply of online information and database access or retrieval services (for brevity 'OIDAR') and states that the place of supply is the location of recipient of services. Hence, if the services provided by YouTube falls under the ambit of OIDAR, then place of supply shall be location of recipient, that is Mr Bored, in our case study.

The definition of OIDAR is provided in Section 2(17) to mean services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in absence of information technology and includes electronic services such as advertising on the internet, cloud services, provision of e-books, movie, music, software and other intangibles through internet, providing data or information, retrievable or otherwise, to any person in electronic form through a computer network, online supplies of digital content (movies, television shows, music and like), digital data storage and online gaming.

On a reading of above definition along with illustrative inclusions, it would be evident that the services provided by YouTube, that is access to video sharing platform, falls under the ambit of OIDAR. The provision of services of YouTube is impossible in absence of information technology. Hence, the services provided by YouTube can be stated to be fall under OIDAR services.

Since, the place of supply of services of OIDAR services is location of recipient of services, that is Mr Bored, and accordingly, it would be India. Since, the supplier of service is located outside India, the

recipient of supply is located in India and place of supply is India, the recipient is obliged to pay tax under RCM. However, since YouTube does not charge any consideration for access of its platform to Mr Bored, there would not be any tax implications in the hands of Mr. Bored. Since, there is no consideration, an examination of position under Section 14, when OIDAR is provided to non-taxable online recipients is also not analysed for brevity.

However, the above analysis does not answer our question, as to what would be the tax implications on the advertisement revenue shared by YouTube to Mr Bored. Now, let us proceed to examine, the place of supply of such services.

**Determination of Nature of Services Involved in Sharing of Advertisement Revenue:**

As discussed earlier, Mr Bored on meeting the threshold set by YouTube, will be eligible for YPP. Under YPP, Mr Bored will be eligible to monetise the video and thereby getting eligible for the share of advertisement revenue earned by YouTube. Mr Bored has to turn on the monetise option for each of his video to be eligible for the share of advertisement revenue. In such a case, Mr Bored can be said to be the service provider, since, he is allowing YouTube to run advertisements in his content. Consequently, YouTube would be the service receiver. We know the locations of the service provider and service receiver. What needs to be determined is the place of supply and that is dependent upon the nature of supply provided by Mr Bored to YouTube.

The drill is same for this scenario also, since one of them is outside India and we need to fall back on Section 13. So, let us find out under what sub-clauses of (3) to (13) of Section 13, the services provided by Mr Bored would fit into. One can argue that the services provided by Mr Bored would also be called as OIDAR. But on a close reading, it would appear that OIDAR necessitates a supply from the provider to recipient with the help of telecommunication or internet. However, in case of Mr Bored, the video is already within the control of YouTube and by click of the button (turning the ads on for monetisation) which is at the disposal of Mr Bored, YouTube can place the ads in his content. In other words, Mr Bored need not do anything more for allowing YouTube to place the ads on his video except giving a consent. Hence, the said service may not be falling under OIDAR. That leaves us to the general rule, that is the place of supply shall be the location of service recipient. Even, if someone takes an argument that services provided by Mr Bored are also in the nature of OIDAR, then also, the place of supply shall be the location of recipient. In any case, the place of supply shall be the location of recipient that is YouTube.

Since, YouTube is outside India, supplier in India and place of supply is outside India, the supply checks out majority of the conditions mentioned for 'export of service' as laid vide Section 2(6) of IT Act. If Mr Bored receives the advertisement revenue in the form of convertible foreign exchange, it can be safely concluded that the services provided by Mr Bored are 'export of services' and thus zero rated supplies as per Section 16 of IT Act.

Rule 96A of CT Rules<sup>6</sup> states that any person who wishes to avail the option to supply of services for export without payment of tax, has to furnish a LUT in Form GST RFD – 11 to the jurisdictional commissioner binding himself to pay tax on such exports, if the payment is not realised in the prescribed time period. GST RFD – 11 can be filed electronically and it would be sufficient for the entire year, if filed at the beginning of the year.

Section 16(3) of IT Act allows refund of input tax credit that has been accumulated by the service provider who gets engaged in provision of zero rated supplies. Hence, Mr Bored can apply for refund of taxes paid by him on his purchases of inputs and input services that are used for provision of export of services, subject to certain conditions and limitations.

Now, let us conclude this part by answering to the question on implications on income generated, that is share of advertisement revenue, by Mr Bored. Since, we have analysed that the said services qualify as export of services, there is no requirement for Mr Bored to pay any tax on the amounts received. However, he is mandated to obtain a registration in light of provisions of Section 24 of CT Act, irrespective of his quantum of receipts. In other words, even income of Mr Bored in our case study has not crossed Rs 20 lakhs, he would be liable to obtain registration and disclose the receipts under zero rated supplies in the periodical returns.

#### **Other Incidental Aspects:**

##### **Services provided by YouTube to Taxable Persons:**

The advertisement revenue that is shared by YouTube to the content creator is derived from the separate contracts that YouTube enters into with different persons. Let us say, a company located in India intends to advertise their products with the help of YouTube. They enter a contract with YouTube and accordingly leave it to the ads algorithm. In such cases, the company is undoubtedly the service receiver, YouTube is the service provider. The nature of supply shall be OIDAR, because, it covers advertising on the internet. In such cases, the place of supply shall be the location of service recipient, that is India. Since, the place of supply is India, the recipient is located in India and provider is located outside India, the tax is required to be paid by Indian company under RCM.

##### **Services provided by YouTube to Non-Taxable Persons:**

YouTube has rolled out premium subscriptions recently. Under premium subscription, an individual can make a payment to YouTube and avoid see advertisements in the content he wishes to watch. Ideally, the individual would be obliged to pay tax under RCM, since all the conditions for import of service gets satisfied. However, in order to relieve the individual from obtaining registration and complying with tax, Section 14 of IT Act stipulates that YouTube is obliged to make payment of tax for all such services provided to individuals.

##### **Services Received by Content Creators from Persons Outside India:**

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<sup>6</sup> Central Goods and Services Tax Rules, 17

It is possible for YouTube content creators located in India to avail certain services from outside India for creating the content that is to be hosted on YouTube. Let us say, in our case study, Mr Bored has subscribed for a software tool which is used for editing the video before posting it on YouTube. The payment is made to the software tool company which is located outside India using a credit card. In such cases, Mr Bored is obliged to pay tax under RCM, if such service qualifies the import of service, that is if for such service, the place of supply is India. If place of supply is outside India, then there is no obligation to pay tax under RCM as discussed in one of the scenarios above while dealing with importance of place of supply.