ARTICLE

Taxing Cross-Border E-Commerce and Digital Streaming Platforms: Challenges Impending

A Company Secretary's Perspective on the Intersection of GST, FEMA and Corporate Compliance

Cross-border commerce conducted over the internet — the streaming subscription, the cloud tool billed from abroad, the marketplace that connects an Indian buyer with a foreign seller — now sits at the centre of India's tax and regulatory architecture. For these businesses, the indirect-tax question can never be answered in isolation. A foreign platform's Goods and Services Tax position is entangled with the exchange-control rules that govern how capital enters the company, the corporate-law obligations attaching to its Indian entity, and the recent dismantling of the Equalisation Levy. This article examines the GST treatment of cross-border digital supplies, situates it within the Foreign Exchange Management Act framework that shapes foreign-funded e-commerce, and argues that the practitioner best placed to navigate this terrain is one who reads all three regimes together. It is written for promoters, finance heads and fellow professionals advising companies in this space.

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INTRODUCTION

THE CONVERGENCE NOBODY PLANNED FOR

India did not set out to build a single, coherent code for the digital economy. What exists instead is a layering of statutes enacted at different times for different purposes — the Integrated Goods and Services Tax Act of 2017, the Foreign Exchange Management Act of 1999, the Companies Act of 2013, and a succession of Finance Acts — each of which now bears on the same set of cross-border digital businesses. For the company that streams content to Indian subscribers, sells software on subscription, or runs a marketplace funded by foreign capital, compliance is no longer a matter of satisfying one regulator at a time. The regimes overlap, and the points of overlap are where companies most often come unstuck.

The completion of more than eight years of GST is a convenient moment to take stock, because the period since 2023 has seen unusually concentrated change in precisely this area: the abolition of the business-to-consumer exemption for foreign digital suppliers, the widening of the very definition of taxable digital services, the complete rollback of the Equalisation Levy, and a sharpening of enforcement against offshore operators. Each of these is, on its own, an indirect-tax development. Read together with the foreign-investment rules that determine how these companies are capitalised, they describe a compliance environment that rewards an integrated view and punishes a siloed one.

This article takes that integrated view. It begins with the GST treatment of cross-border digital supplies, turns to the exchange-control and corporate-law framework that governs foreign-funded platforms, and closes with the practical compliance failures that recur in practice — the places where a Company Secretary's involvement earns its keep.

OIDAR: HOW GST REACHES A SUPPLIER WITH NO OFFICE IN INDIA

The conceptual difficulty with taxing a foreign digital supplier is obvious: there is nothing physically present to tax. India's answer, carried into the GST regime from the earlier service-tax framework, is the category of Online Information and Database Access or Retrieval services — OIDAR. The Integrated Goods and Services Tax Act defines these as services whose delivery is mediated by information technology over the internet or an electronic network, and which are impossible to supply in the absence of information technology. Streaming platforms, cloud storage, software-as-a-service, online gaming, e-books and digital advertising space all fall within the description.

The architecture is destination-based. Tax follows consumption, so that a service consumed in India is taxable in India regardless of where the supplier sits. To make that workable against a supplier with no establishment here, the law adopts two devices: a deeming mechanism to locate the consumer in India, and a simplified registration scheme that allows a foreign supplier to register, file and pay without setting up any office or establishment in the country.

a. The 2023 widening: human intervention no longer matters

For years, the OIDAR definition turned on whether a service was essentially automated and involving minimal human intervention. That qualifier did real work: it kept services with a meaningful human element outside the net. The Finance Act, 2023 removed those words. The consequence is significant and is still being absorbed by businesses: a far wider range of digitally delivered services — including hybrid offerings that combine technology with human input — can now qualify as OIDAR. The classification test has shifted decisively towards the mode of delivery rather than the nature of the service. Companies that previously took comfort in a human-element argument should revisit that position; the argument no longer exists.

b. The October 2023 turn: the B2C exemption is gone

The second structural change took effect on 1 October, 2023. Until then, a foreign OIDAR supplier serving Indian individuals and government for non-business purposes enjoyed an exemption. That exemption was withdrawn. A foreign supplier providing digital services to Indian consumers must now register and charge Integrated GST at eighteen percent, irrespective of the recipient's purpose. It is worth noting that the rate restructuring effected under the "GST 2.0" reforms of September 2025 — which collapsed the slabs and removed the twelve percent rate — left the eighteen percent rate on OIDAR services undisturbed; that rate continues to apply. Critically, there is no turnover threshold for foreign suppliers — the obligation arises from the first transaction, and registration is mandatory under Section 24 of the Central Goods and Services Tax Act. A resident authorised signatory holding a valid Permanent Account Number must be appointed, and records must be retained for several years.

c. Who actually pays: forward charge, reverse charge, and the B2B/B2C divide?

The mechanism by which GST is collected depends on the character of the recipient, and this is where many businesses misread their obligations. The dividing line is the Non-Taxable Online Recipient — broadly, an individual or unregistered person consuming the service for non-business purposes.

Business-to-consumer (recipient is a Non-Taxable Online Recipient): The foreign supplier must register under the simplified scheme, charge IGST and remit it. The compliance burden sits offshore, with the supplier.

Business-to-business (recipient is a GST-registered person): The reverse charge mechanism applies. The Indian recipient self-assesses and pays the IGST directly, and may then claim input tax credit subject to the usual conditions.

The difficulty is practical: distinguishing a business recipient from a consumer is not always straightforward, and where status cannot be established, the default treatment as a Non-Taxable Online Recipient applies — increasing the compliance exposure of the foreign supplier. Foreign suppliers file Form GSTR-5A; non-resident taxable persons more generally file GSTR-5. For an Indian business receiving services from an unregistered foreign supplier, the reverse-charge liability is real and is frequently overlooked in practice, exposing the recipient to interest and penalty under the GST law.

d. Enforcement is no longer theoretical

For much of the early GST period, the OIDAR framework looked stronger on paper than in practice, because the authorities lacked the means to track offshore suppliers who simply did not register. That gap is narrowing. The administration has deployed data analytics to identify missing registrations and unpaid tax by foreign providers, and has stepped up audits and penalty action. In July 2025, the Supreme Court disposed of a public interest litigation that had highlighted the enforcement and compliance gaps in the OIDAR regime, directing the GST Council to consider improved data-transparency and monitoring frameworks. The proposed Digital Identity Provider concept, requiring foreign platforms to maintain detailed transaction records linked to Indian users, points in the same direction. The signal to foreign-facing businesses is unambiguous: the period of low-risk non-compliance is ending.

MARKETPLACES AND THE SECTION 9(5) / SECTION 52 ARCHITECTURE

Where the platform is not itself the supplier but an intermediary connecting buyers and sellers, the GST design changes shape. Two provisions of the Central Goods and Services Tax Act do most of the work, and they pull in different directions.

Section 9(5) treats the electronic commerce operator as the deemed supplier for certain notified services — the operator pays GST as if it had made the supply itself, regardless of whether the underlying supplier is registered. Section 52 is different in kind: it requires the operator to collect Tax Collected at Source on the net value of taxable supplies made through it, where the operator collects the consideration on behalf of the supplier. TCS is not an additional tax — it functions as an advance collection that is credited to the supplier's electronic cash ledger and adjusted against the supplier's liability.

The TCS rate was reduced, on the recommendation of the 53rd GST Council meeting, from one percent to half a per cent of net taxable supplies with effect from July 2024 — 0.25 percent CGST plus 0.25 percent SGST for intra-state supplies, or 0.5 percent IGST for inter-state supplies — a measure intended to ease the working-capital strain on sellers. Operators file Form GSTR-8; sellers reconcile the credited TCS in their returns. A point of recurring friction in practice is the mismatch between an operator's GSTR-8 and a seller's auto-populated data, which can lead to disallowance of refund claims; disciplined monthly reconciliation is the only reliable defence.

Two further consequences deserve emphasis for any business selling through a marketplace. First, a seller supplying goods through an e-commerce operator must register under GST irrespective of turnover — the ordinary threshold exemption does not apply, by virtue of Section 24. Second, an operator must register in every State in which it makes taxable supplies, and a seller has historically faced the parallel difficulty of maintaining a principal place of business in each State into which it sells. Here the September 2025 reforms bring welcome relief: the GST Council has approved a simplified registration scheme for small suppliers selling through e-commerce operators across multiple States, easing precisely this multi-State burden. Even so, for a young company scaling onto several platforms, registration and reconciliation obligations arrive earlier and in greater number than founders typically expect, and the simplified scheme should be assessed against the company's specific facts rather than assumed to apply.

> Companies that treat tax, exchange control and corporate law as one integrated compliance problem — and that engage advisers who do the same — will navigate the next phase with far greater confidence than those who continue to address each regime in isolation.

Table 1: Section 9(5) versus Section 52 at a glance

Feature	Section 9(5)	Section 52 (TCS)
Role of operator	Deemed supplier; pays GST itself	Collection agent; collects tax at source
Applies to	Notified services only	Net taxable supplies via the platform
Return	GSTR-1 (Table 15)	GSTR-8
Effect on supplier	Supplier may not need to register for these services	Supplier registers regardless of turnover; claims TCS credit

GST 2.0 AND THE INTERMEDIARY REFORM: WHAT CHANGED IN 2025–26?

Any article written in mid-2026 must reckon with the most significant restructuring of GST since its introduction. The 56th GST Council meeting of 3 September 2025 launched the reforms popularly described as "GST 2.0," notified by the Central Board of Indirect Taxes and Customs on 17 September 2025, with most changes taking effect from 22 September 2025. The headline measure was rate rationalisation — a move towards a simplified slab structure with the twelve percent rate abolished — but several accompanying changes bear directly on cross-border and digital businesses and on the marketplace mechanism discussed above.

The reform most relevant to the cross-border theme is the amendment to the place of supply for intermediary services. Since the inception of GST, Section 13(8)(b) of the Integrated Goods and Services Tax Act deemed the place of supply of intermediary services to be the location of the supplier — India — which meant that an Indian agent or facilitator serving a foreign principal had to charge eighteen percent IGST and could not treat the service as an export. This was among the most litigated provisions in the entire GST framework. Acting on the 56th Council's recommendation, the Legislature has now omitted Section 13(8)(b) through the Finance Act, 2026. The consequence is that the place of supply for intermediary services now falls under the default rule in Section 13(2) — the location of the recipient — so that such services to overseas recipients can qualify as zero-rated exports, subject to satisfying the export conditions under Section 2(6) of the IGST Act.

A word of caution on the effective date is warranted. The Finance Act, 2026 received Presidential assent on 30 March 2026. Some commentators read the omission as operative from that date; others note that the operative date was to be separately notified by the Board and advise awaiting that notification before altering invoicing. Practitioners should therefore verify the precise commencement against the relevant notification before relying on the change for a specific transaction. The amendment also cuts both ways: an Indian recipient of intermediary services from an overseas provider will now bear IGST under reverse charge — a real cost where input tax credit is restricted.

The September 2025 package also touched the marketplace mechanism in ways that matter for digital businesses. The e-commerce operator has been proposed as the person liable to pay GST under Section 9(5) on local-delivery services supplied through it where the underlying supplier is not liable to register — an extension of the deemed-supplier concept. And, as noted above, a simplified registration scheme for small multi-State e-commerce sellers was approved. Running alongside these substantive changes is a tightening of the compliance machinery that every advised company must now absorb: mandatory e-invoicing for businesses above the prescribed turnover threshold, a hard block on input tax credit where return data does not reconcile, and the Invoice Management System, under which inaction on an invoice is treated as deemed acceptance. For a cross-border digital business with high transaction volumes, these are not peripheral — they reshape day-to-day compliance discipline.

THE END OF THE EQUALISATION LEVY — AND WHY IT STILL MATTERS?

No account of taxing cross-border digital business in India is complete without the Equalisation Levy, India's earlier, unilateral attempt to tax the digital economy outside the income-tax framework. Introduced by the Finance Act, 2016, it operated in two phases: a six percent levy on online advertising payments to non-resident providers, and, from April 2020, a two percent levy on e-commerce supply and services by non-resident operators above a turnover threshold.

Both are now gone. The two percent e-commerce levy was withdrawn with effect from 1 August 2024, and the six percent advertising levy was abolished from 1 April 2025 through the Finance Act, 2025. India's Equalisation Levy framework is, as a result, entirely defunct — a rollback estimated to cost the exchequer in excess of three thousand crore rupees in the 2025-26 financial year, undertaken in step with progress on the OECD's multilateral Pillar One framework and amid wider trade considerations.

Three points matter for businesses and their advisers. First, the levy sat outside the Income-tax Act and therefore outside India's tax treaties, which meant foreign payers could not claim foreign tax credit for it in their home jurisdictions — a genuine double-taxation problem that its removal cures. Second, abolition is prospective: compliance obligations for past periods survive, so unpaid levies, unfiled statements and pending assessments remain enforceable. A company that assumes the levy's disappearance wipes the slate clean for prior years is mistaken. Third, with this direct-tax instrument retired, GST becomes the principal indirect-tax mechanism through which India reaches cross-border digital consumption — raising, rather than lowering, the stakes of getting the OIDAR and marketplace analysis right.

THE FEMA SPINE: HOW FOREIGN CAPITAL REACHES A DIGITAL BUSINESS?

Most cross-border digital businesses of any ambition are funded, at least in part, by foreign capital. The moment that capital enters, the Foreign Exchange Management Act and the foreign-investment rules made under it become as central to the company's compliance as any tax statute — and the two cannot sensibly be advised upon separately. This is the analytical spine of the present discussion: the GST questions described above almost never arise in a company whose ownership and funding are not themselves shaped by FEMA.

a. **The marketplace/inventory distinction — the single most consequential rule**

India's foreign-investment policy draws a hard line through the e-commerce sector. One hundred percent foreign direct investment is permitted under the automatic route for the marketplace model — a platform that merely connects buyers and sellers and provides technology and ancillary services such as logistics. Foreign direct investment is prohibited in the inventory-based model, where the platform itself owns the goods it sells. The policy rationale is the protection of smaller domestic retailers from foreign-funded dominance.

The conditions attaching to the marketplace permission are exacting and easily breached in operational practice. A marketplace entity cannot own the inventory sold on it; cannot directly or indirectly influence the sale price of goods; and must provide a level playing field to all sellers, without mandating that any seller sell exclusively on its platform. A foreign-funded marketplace must also furnish a statutory auditor's certificate to the Reserve Bank of India by 30 September each year confirming compliance with these conditions. The trap, in practice, is that a company structured on paper as a pure marketplace can drift, through its commercial arrangements with related sellers or its pricing and discounting behaviour, into what is in substance an inventory model — and thereby into a foreign-investment contravention. Reviewing seller contracts and pricing arrangements against these conditions is squarely within the compliance officer's remit.

b. Reporting: FC-GPR, FC-TRS, FLA and the discipline of deadlines

FEMA's reporting obligations are unforgiving precisely because they are procedural. When an Indian company issues shares or convertible instruments to a foreign investor, it must report the allotment in Form FC-GPR through the Reserve Bank's FIRMS portal, ordinarily within thirty days of allotment. Transfers of shares between residents and non-residents are reported in Form FC-TRS. Every company that has received foreign investment, or made investment abroad, must file the annual Foreign Liabilities and Assets return by 15 July each year. The reporting burden, it should be stressed, falls on the Indian investee company, not the foreign investor — though the investor must supply timely Know Your Customer documentation.

Two substantive conditions sit alongside the procedural ones. Shares issued to a non-resident must be priced at or above fair market value, supported by a valuation certificate, and a Company Secretary's certificate confirming compliance with the Companies Act forms part of the FC-GPR filing. And FEMA prohibits guaranteed returns on equity: foreign capital entering as equity must bear genuine entrepreneurial risk, so any pre-agreed exit at a fixed price above fair value is void. Crucially, FEMA compliance is independent of tax compliance — paying the tax does not cure a missed RBI filing. Late or missed filings attract Late Submission Fees or compounding proceedings, and an unresolved reporting default can block a future funding round or an investor exit until it is cleared. As the Reserve Bank moves towards automated cross-border transaction monitoring, the cost of casual non-reporting is rising.

c. The land-border rule and downstream investment

Two further FEMA features routinely affect digital businesses. Investment from entities of countries sharing a land border with India — most consequentially China — was moved from the automatic route to requiring prior government approval, a change with direct bearing on the cap tables of many technology companies that took early Chinese investment. And where an Indian company that has itself received foreign investment goes on to invest in another Indian company, downstream investment reporting is triggered — an obligation frequently missed in group structures, and one that a diligent secretarial review will catch.

WHERE THE REGIMES COLLIDE: RECURRING COMPLIANCE FAILURES

The case for reading these regimes together is best made not in the abstract but through the failure points that recur in practice. Each of the following is a place where treating GST, FEMA and corporate law as separate workstreams produces error.

- **The mis-structured marketplace:** A foreign-funded platform operates as a marketplace for FEMA purposes but, through inventory ownership or price control, behaves as an inventory model — simultaneously breaching the FDI condition and unsettling its GST position as a deemed supplier under Section 9(5). The two issues are one issue, and must be diagnosed together.
- **The overlooked reverse charge:** An Indian company subscribes to foreign cloud or software services and fails to discharge IGST under reverse charge, accumulating interest and penalty exposure that surfaces only at audit.
- **The missed FC-GPR window:** A funding round closes, shares are allotted, and the thirty-day FC-GPR clock is forgotten in the excitement — leaving a reporting default that resurfaces, expensively, at the next round's due diligence.
- **The valuation gap:** Shares are issued to a foreign investor without a contemporaneous valuation supporting fair-market-value pricing, jeopardising both the FEMA filing and the integrity of the allotment under the Companies Act.
- **The stale human-intervention argument:** A foreign supplier continues to treat a service as outside OIDAR on the basis that it involves human input — a position the 2023 amendment has removed.
- **The forgotten 30 September certificate:** A foreign-funded marketplace omits the annual statutory auditor's certificate to the RBI, a discrete and easily avoided contravention.

None of these failures is exotic. Each is ordinary, and each is preventable by a practitioner who sees the company whole rather than through the lens of a single statute.

THE PRACTITIONER'S VANTAGE POINT

The recurring theme of this article is that cross-border digital businesses are governed by regimes that were not designed to fit together but that now must be read together. The GST treatment of a foreign supplier cannot be settled without knowing how the company is owned and funded; the FEMA position cannot be advised without an eye to the corporate-law formalities of allotment and the tax character of the flows; and the corporate secretarial function — maintaining registers, certifying filings, reviewing contracts, tracking deadlines — is the connective tissue that holds the analysis together.

This is precisely the vantage point of the Company Secretary as compliance officer. The role is not to be the deepest specialist in any one regime, but to be the professional who sees the interactions — who notices that a pricing arrangement designed for commercial reasons has FEMA and GST consequences, that a funding round has corporate, exchange-control and valuation dimensions that must move in step, and that a missed procedural deadline in one regime can freeze activity in another. For founders and finance heads of companies in this space, consolidating these threads under a single advisory relationship is not merely convenient; given how the regimes collide, it is the surest protection against the failures catalogued above.

CONCLUSION

India's approach to taxing cross-border e-commerce and digital platforms has matured rapidly. The OIDAR framework has been widened and its exemptions stripped away; the marketplace TCS mechanism has been recalibrated; the GST 2.0 reforms of September 2025 have rationalised rates and, through the omission of Section 13(8)(b), reset the place-of-supply rule for intermediary services; the Equalisation Levy has been retired in favour of GST and the multilateral process; and enforcement against offshore suppliers is hardening. Running alongside, and inseparable from, all of this is the FEMA architecture that determines how these businesses are capitalised and what they may and may not do with foreign money. The challenges that are impending are less about any single rule than about their accumulating interaction. Companies that treat tax, exchange control and corporate law as one integrated compliance problem — and that engage advisers who do the same — will navigate the next phase with far greater confidence than those who continue to address each regime in isolation.

REFERENCES:

i. *53rd GST Council meeting (June 2024) and CBIC Notification No. 15/2024 – Central Tax — reduction of e-commerce TCS rate from 1% to 0.5% under Section 52(1), CGST Act.*

ii. *56th GST Council meeting (3 September 2025) and CBIC notifications dated 17 September 2025 — "GST 2.0" rate rationalisation effective 22 September 2025; simplified registration scheme for small e-commerce sellers; proposed extension of Section 9(5) to local-delivery services.*

iii. *CBIC / Reserve Bank of India guidance on reverse charge for OIDAR services received by registered persons; GSTR-5A (foreign OIDAR), GSTR-5 (non-resident taxable person) and GSTR-8 (TCS) return forms.*

iv. *Central Goods and Services Tax Act, 2017, Sections 9(5), 24 and 52; Integrated Goods and Services Tax Act, 2017.*

v. *Consolidated FDI Policy and DPIIT Press Note No. 3 (2016 Series) / Press Note of December 2018 — marketplace model (100% FDI, automatic route) versus prohibited inventory-based model; conditions including the 30 September statutory auditor's certificate to the RBI.*

vi. *Finance (No. 2) Act, 2024 — withdrawal of the 2% Equalisation Levy (e-commerce) with effect from 1 August 2024; Finance Act, 2025 — abolition of the 6% Equalisation Levy (online advertising) with effect from 1 April 2025.*

vii. *Finance Act, 2023 — amendment to the definition of OIDAR services (omission of the "essentially automated and involving minimal human intervention" requirement).*

viii. *Finance Act, 2026 (No. 4 of 2026; Presidential assent 30 March 2026), Section 157 — omission of Section 13(8)(b) of the IGST Act, shifting the place of supply of intermediary services to the recipient's location under Section 13(2). (Commencement to be read with the relevant CBIC notification.)*

ix. *Foreign Exchange Management Act, 1999 and the Foreign Exchange Management (Non-Debt Instruments) Rules — reporting through the RBI FIRMS portal: Form FC-GPR (within 30 days of allotment), Form FC-TRS, and the annual Foreign Liabilities and Assets (FLA) return (by 15 July).*

x. *Supreme Court order (July 2025) disposing of public interest litigation on enforcement gaps in the OIDAR regime; proposed Digital Identity Provider framework for foreign digital platforms.*

xi. *Withdrawal of the B2C OIDAR exemption with effect from 1 October 2023; foreign OIDAR suppliers liable to 18% IGST without turnover threshold.*

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