

# RECENT LEGAL DEVELOPMENTS IN THE ONLINE REAL MONEY GAMING SECTOR



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## INTRODUCTION

Recent shifts in the Online Money Gaming sector in India have been driven by significant legal developments, particularly arising from the 50<sup>th</sup> and 51<sup>st</sup> GST Council Meetings. These discussions, helmed by Smt. Nirmala Sitharaman, the Union Finance & Corporate Affairs Minister, has introduced taxation policies with the dual aim of regulatory control and revenue enhancement.

The rationale behind this shift lies in both revenue generation and curbing potential social concerns related to online gaming addiction. However, concerns have arisen about the impacts on legitimate domestic platforms and the potential migration to offshore and illegal platforms. Addressing these concerns, the subsequent 51<sup>st</sup> GST Council Meeting introduced amendments to the CGST and IGST Acts, clarifying the taxation landscape for casinos, horse racing, and online gaming. Simplified registration processes for foreign suppliers were also proposed, reflecting the industry's international engagement.

This article delves into the intricacies of the developments, dissecting their implications on players, companies, and the broader sector. By examining the amendments and their potential consequences, we aim to shed light on the evolving dynamics of the online real-money gaming landscape in India.

## THE 50<sup>th</sup> GST COUNCIL MEETING

In the 50<sup>th</sup> GST Council meeting conducted on 11<sup>th</sup> July 2023, there have been recommendations for an increase in taxation on the gaming sector in order to pertain to both regulatory and revenue-related aspects of the industry. After in-depth deliberations, it was concluded as a unanimous decision to increase the GST rate on online gaming services to 28%, and this tax shall be applicable on the Full-Face value therein. Earlier, these services were taxed at 18% on the Gross Gaming

Revenue (GGR) which was the difference between the amount of money players wager minus the amount that they win. It was decided that online gaming as well as horse racing should be taxable leading to the decision of taxing all three, casinos, online gaming, and horse racing at a uniform rate of 28%.

Some of the reasons for this increase include revenue generation as well as a positive social impact. *Firstly*, since the online gaming industry has seen a substantial boost in the past few years, increasing the taxes on the same would fundamentally up the government's revenue collection. *Secondly*, addiction to online gaming can have an adverse impact; to limit and discourage the same, the government has attempted to increase the taxes. Implications of this tax increase would include changing consumer behaviour which may lead to a decrease in the demand for online gaming services.

### **THE 51<sup>st</sup> GST COUNCIL MEETING**

Unhindered by the Industry representations made to it, the GST Council in its 51<sup>st</sup> Meeting, conducted on 2<sup>nd</sup> August 2023, has clarified that the decision undertaken in its 50<sup>th</sup> meeting to levy a tax of 28% on actionable claims provided by Horse Racing, Online Money Gaming Companies and Casinos will be supplemented by amendments in the IGST and CGST Act as well. The Council has undertaken an initiative to implement these amendments by 1<sup>st</sup> October 2023 and conduct a review after 6 months of their enactment.

The amendment includes changes to Schedule III of the CGST Act, 2017, aimed at clarifying how taxation applies to supplies in casinos, horse racing, and online gaming. The Council has suggested introducing a specific provision in the IGST Act, 2017, which outlines the liability to pay GST on online money gaming services provided by a supplier outside India to an individual in India. The recommendation also involves setting up a simplified registration process for such foreign suppliers to register in India. If such a foreign supplier fails to comply with registration and tax payment requirements, public access to the gaming facilities provided by them can be blocked by the Government.

The implications of this increase in the taxation will mean that players will have to give up a higher percentage of their earnings. In this case, the higher GST rate of 28% leads to a larger tax amount being deducted from the winnings, resulting in a smaller gross return after the deduction of taxes. This, in turn, impacts the net return for the player. The player's net return is calculated by subtracting the original bet, deductions (including both the platform fee and the GST), and taxes from the total winnings. As the tax rate increases, the deductions and taxes collectively have a more pronounced impact on the final earnings. Therefore, an increased tax rate not only affects the direct tax liability but also compounds the deductions, leading to a diminished net return for the player.

This shows why the industry is concerned about players being discouraged from playing due to the higher taxation rates.

## **IMPACT OF THE DECISION ON COMPANIES AND PLAYERS**

The GST Council in its 51<sup>st</sup> Meeting has clarified that the decision undertaken in its 50<sup>th</sup> meet to levy a tax of 28% on the Full Value of the Contest Entry Amount (CEA), with no distinction between Games of Skill and Games of Chance, will be implemented.

- *ONLINE GAMING*: For online gaming, players could be subjected to a 28% tax rate on the total worth of the participation, which includes both the platform fee and the user-contributed prize pool.
- *HORSE RACING*: GST will still be charged at 28% on the entire value of bets collected through the totalisator and placed with bookmakers.
- *CASINOS*: GST to be levied at the rate of 28% once on purchase of chips/coins, on face value.

With such low returns, players will be increasingly reluctant to invest their money. In turn, this will lead to decreased profitability for the Online Gaming, Horse Racing Companies and Casinos, who will be forced to cut costs in order to sustain profitability. There is also little to no potential for changes in the Platform fees for these companies, as an increase there would mean further reduced earnings for bettors. Executives of such companies have also indicated that introducing a tax rate of 28% will pose notable difficulties for the gaming sector. This increased tax load will influence the cash flow of businesses, constraining their capacity to allocate resources for innovative endeavours, research, and the growth of their operations. It was also emphasized that games and applications that are centred around skill and involve betting or casinos should be distinguished from one another in terms of treatment. Further, Online Money Gaming has till date, contributed to FDI flows amounting to \$2.6 Billion<sup>1</sup>. Taxing these companies at this point might negatively affect this and can lead to decreased foreign investment in this sector.

## **THE 2023 CGST & IGST AMENDMENT ACTS**

The Central Goods and Services Tax (Amendment) Bill, 2023 and the Integrated Goods and Services Tax (Amendment) Bill, 2023 have been passed by the Parliament on 11<sup>th</sup> August, 2023. These bills have provided further information on the decisions taken in the 51<sup>st</sup> GST Council Meet. Salient features of the bills include –

### **Central Goods and Services Tax (Amendment) Bill, 2023**

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<sup>1</sup> Gaming Industry in India, <https://www.investindia.gov.in/sector/media/gaming>.

- **Online Money Gaming defined** – Online money gaming encompasses online games where players deposit money, including virtual assets, with the hope of winning money or equivalent value. This applies regardless of whether the outcome is determined by skill, chance, or a combination of both.
- **Supplier of An Actionable Claim** – The Bill also introduces the concept that those who organize or facilitate the supply of specified actionable claims will be considered their suppliers. This applies to individuals who operate digital or electronic platforms for such supply. This designation stands regardless of how the consideration for the supply of these claims is received or made available to them, which can include money, its equivalent value, or virtual digital assets.
- **Taxation of Actionable Claims** – Suppliers of specific actionable claims will now be liable to pay CGST. The term “specified actionable claims” is defined to include claims involved in activities like Betting, Casinos, Horse racing, Lottery, Gambling and Online Money Gaming.

### **Integrated Goods and Services Tax (Amendment) Bill, 2023**

- **Levy of IGST on Specific Imported Goods** – The statute outlines that the imposition and collection of IGST on goods brought into India will adhere to the regulations outlined in the Customs Tariff Act, 1975. The proposed legislation exempts the aforementioned IGST imposition method for goods that the central government identifies and notifies based on recommendations from the GST Council.
- **Determining Place of Supply for Goods** – The draft legislation specifies that when goods are supplied (excluding those that are imported or exported) to an unregistered individual, the location of supply will correspond to the address documented in the invoice. If the invoice lacks an address, the supplier's location will be considered as the place of supply.
- **Registration for Foreign Suppliers** – The recommendation made by the 51<sup>st</sup> GST Council for setting up a registration process for foreign suppliers has also been introduced as Section 14A in the IGST Act, 2017. The process of registration for a foreign supplier will be the same as that for payment of tax by a supplier of online information and database access or retrieval services under Section 14 of the IGST Act, 2017.

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