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Online Gaming vs GST



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GESTALT:

Online gaming has emerged as a booming industry worldwide, providing entertainment and engagement to millions of users across the Globe. In India, the online gaming sector has witnessed remarkable growth in recent years, thanks to increased internet penetration and the proliferation of smartphones. As the popularity of online gaming rises, so does the need for clarity on its taxation. In this article, we explore how online gaming is treated under the Goods and Services Tax (GST) regime in India.

Understanding the "Online Gaming"-

Online gaming refers to electronic games played over the internet or on digital devices such as computers, smartphones, or gaming consoles. These games range from casual and social games to multiplayer online battle arenas (MOBAs) and massive multiplayer online role-playing games (MMORPGs). Online gaming platforms offer a variety of games based on "Game of Skill" and "Game of Chance" concept.

A "Game of Skill" is a type of game where the outcome is predominantly determined by the skill, knowledge, experience, or strategy of the player rather than by chance. It is generally considered legal in many jurisdictions because they are considered to involve an element of skill rather than being solely dependent on luck or chance.

Meanwhile the "Game of Chance" is a game where the outcome is primarily determined by random events, luck, or a random number generator. It can be subject to various regulations, and their legality often depends on local Laws and Regulations. In some regions, they may be heavily regulated or even prohibited except in licensed casinos or under specific circumstances.

With effect from the Press Release of the GST Council's 50th Meeting, held on July 11, 2023 the GST Council made recommendations on the increasing the rate/tariff imposition of GST in respect of online gaming, as well as Casinos and Horse Racing, based on the report submitted by the Group of Ministers (GOM) specifically formed for this purpose, putting an end to the debate over whether these activities are "games of skill or chance." In terms of GST Council's meeting, there is no longer any discrimination as per the

recommendations, online gambling, casinos, and horse racing will now be subject to a unified GST rate of 28% ad valorem on the entire face value.

GST CONTEXT AND ONLINE GAMING:

I. Classification of Online Gaming Services under GST:

Under the Goods and Services Tax (GST) regime in India, online gaming is considered as "supply of services" and falls under the ambit of "online information and database access or retrieval services" (OIDAR services)¹. Online gaming is considered as "Supply of Service" and subject to GST in India for the following reasons:

1. Online gaming involves providing a service to users who access and play games on digital platforms. The gaming platforms offer a virtual environment and gaming experiences to users, which constitutes a service provided to the customers.
2. Online gaming is considered a recreational and entertainment service, similar to other leisure activities like watching movies, attending amusement parks, or sports events.²
3. Intangible Digital Services: Online gaming is an intangible digital service delivered electronically over the internet. The Indian GST law considers electronically supplied services as services liable to GST³.

The Hon'ble Karnataka High Court in ***Games Kraft technologies private limited v. directorate general of goods services tax intelligence***⁴ has cleared that, "Taxation of games of skill is outside the scope of the term "supply" in view of Section [7\(2\)](#) of the CGST Act, 2017 read with Schedule III.

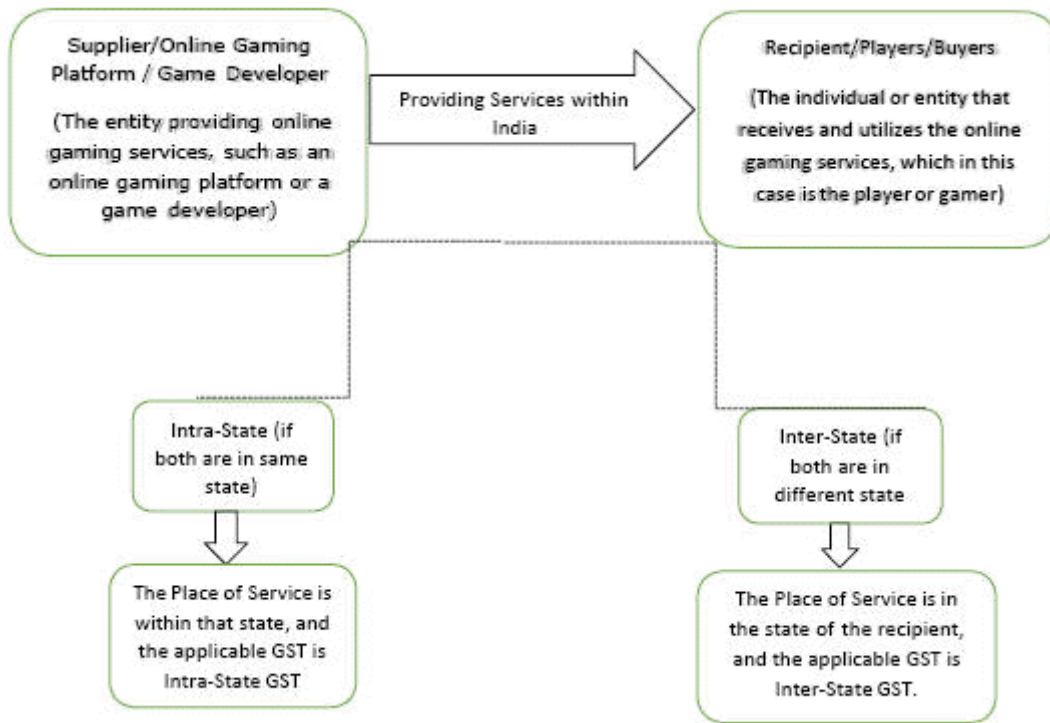
A game of chance whether played with stakes is gambling;

A game of skill whether played with stakes or without stakes is not gambling...;"

II. "Place of Services":

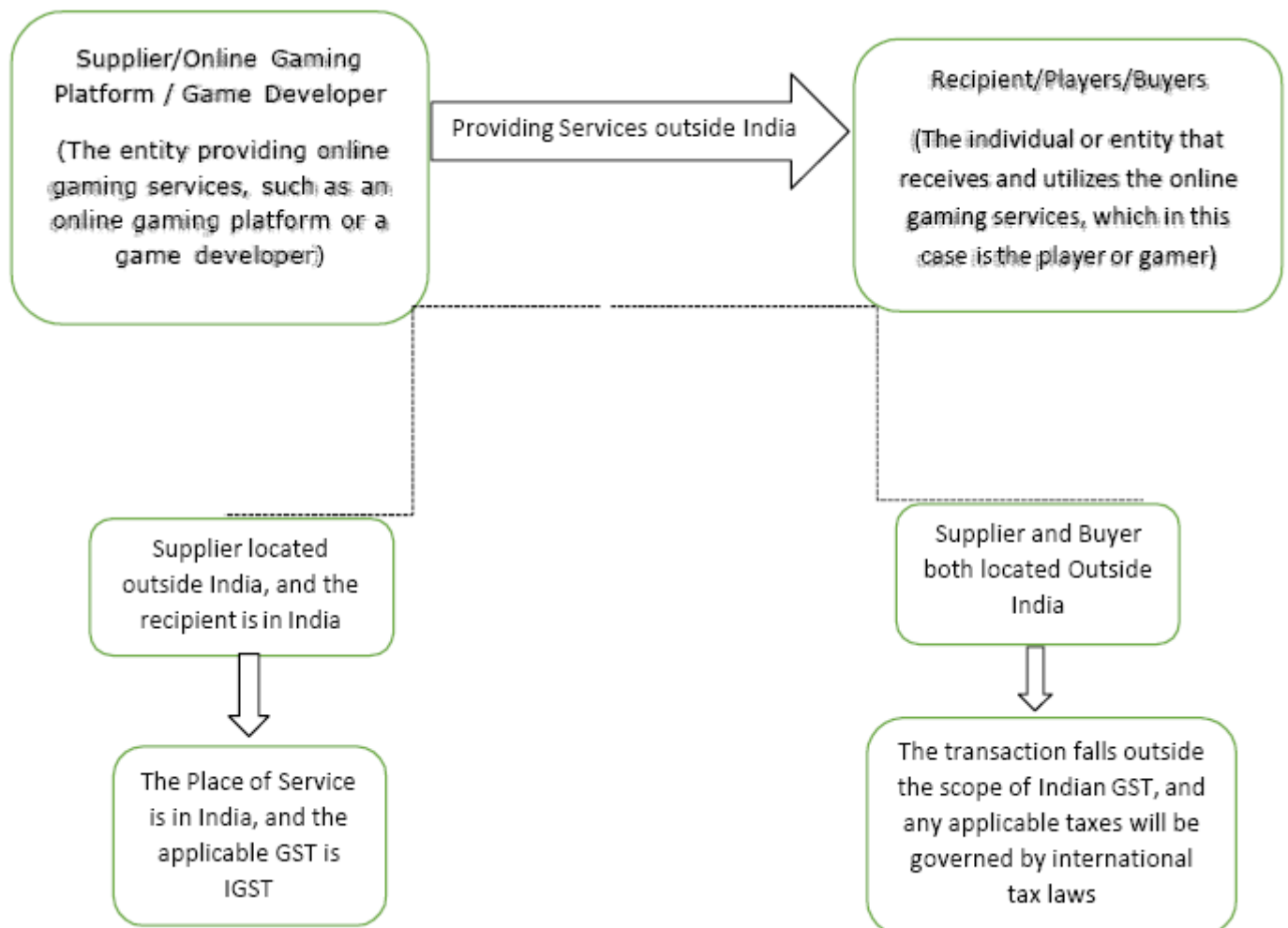
Place of services play a crucial role in determining the applicability of GST on online gaming services. These rules are essential for identifying the jurisdiction where the tax is payable, as GST is a destination-based tax. In the case of online gaming, the place of services is determined based on the location of the recipient of the service.⁵

- Online Gaming to Domestic Users (Within India):
When an online gaming service is provided to users located within India, the place of supply is considered to be within India.



- Online Gaming to Foreign Users (Outside India):

When online gaming services are provided to users located outside India, the place of supply is considered to be outside India. This makes the supply an inter-state supply.



III. Reverse Charge Mechanism for Foreign Service Providers:

The Reverse Charge Mechanism (RCM) is a concept in taxation where the liability to pay tax is shifted from the supplier of goods or services to the recipient of those goods or services. The RCM is generally applied in specific cases and is designed to ensure that tax compliance is maintained, especially in situations where the supplier may not be easily traceable or may not have a presence for tax purposes in the Country.

For online gaming services provided by foreign entities to users located in India, the GST liability falls on the recipient of the service in India under the reverse charge mechanism. The Indian user is required to pay GST directly to the government for the services received from the Foreign Service provider. This mechanism ensures that even services provided by non-resident entities to Indian users are subject to GST, allowing the government to collect taxes on cross-border transactions⁶. **Amogh R. Bhatwadekar, In re**(GST AAAR Maharashtra)⁷ MAAR⁸ vide order no. GST-ARA- 06/2019-20/B-58 dated 15-12-2020 held that "the subject transaction which involve the procurement of e-good from the foreign vendors/suppliers would attract the levy of IGST under RCM..."⁹

IV. Registration and compliance under the GST regime in India are essential to ensure smooth operations and adherence to the tax laws. As online gaming services fall under the category of OIDAR services, service providers must follow specific registration procedures and comply with various GST regulations¹⁰, they are required to register under GST if their aggregate turnover exceeds the prescribed threshold limit, the threshold limit for GST registration was Rs. 20 lakhs (Rs. 10 lakhs for special category states), even if the turnover does not exceed the threshold limit,

online gaming service providers have the option of voluntary GST registration.¹¹

V. Determining the Applicable GST Rate -

The GST rate on online gaming business is 18% for "games of skill" and 28% for "games of chance", however these rates have been revised with the help of the Group of Ministers (hereinafter referred as "GoM"), which was formed to look into issues relating to taxation on casinos, horse racing and online gaming. The GoM submitted its first report in June, 2022 and the same was placed before the GST Council in the 47th GST Council meeting¹², wherein it was decided that the GoM may take a fresh look at all the issues, then Gom submitted its second report before the GST Council 50th meeting, held on 11th July, 2023¹³. The GST Council deliberated on the issues provided by Gom and recommended the following:

Suitable amendments to be made to law to include online gaming and horse racing in schedule III as taxable actionable claims.

All three namely Casino, Horse Racing and Online gaming to be taxed at the uniform rate of 28%.

Tax will be applicable on the face value of the chips purchased in the case of casinos, on the full value of the bets placed with bookmaker/totalisator in the case of Horse Racing and on the full value of the bets placed in case of the Online Gaming.¹⁴

CHALLENGES AND FUTURE PROSPECTS:

Ambiguities and Challenges

- (1) Recently GST council has decided to impose 28% GST on the turnover of online gaming industry and many people are opposing this decision.¹⁵ The All India Gaming Federation (AIGF), which represents companies like Nazara, GamesKraft, Zupree and Winzo, said to the *finance express* that

"the decision by the council is unconstitutional, irrational, and egregious ". The online gaming business will confront several obstacles as a result of the high GST rate, which can impact its profitability and growth prospects

- (2) Some online gaming platforms may bundle various services, such as access to games, in-game purchases, and advertising. The tax treatment for bundled services can be unclear, especially when different GST rates apply to each component.
- (3) Online gaming is not constrained by geographical boundaries and many gaming platforms cater to users from multiple countries. Cross-border transactions create complexities in determining the applicable GST rates, considering the place of supply, and complying with tax regulations in different jurisdictions.
- (4) Inconsistencies in state legislation regarding limits on betting and gambling, as well as outright bans on rummy games in some states, have also exacerbated the problem.

Future Prospects

- (1) Rise in Digital Transactions: As the country moves towards a digital economy, the online gaming industry may see an increase in digital transactions, this is a significant trend in the online gaming industry, and has implications for GST compliance and revenue collection. As more players and gaming companies adopt digital payment methods, the government may need to adapt its GST framework to accommodate these changes.
- (2) Export of Gaming Services: The online gaming industry in India has the potential to enter the global market by exporting gaming services. Favorable GST treatment and simplified compliance may encourage Indian gaming companies to expand their customer base beyond domestic borders. This, in turn, can boost exports of services by encouraging cross-border collaboration between Indian gaming companies and international partners , Aligning with the Government's Digital India initiative by supporting the export of gaming services Digital India Initiative of the Government of India which aims to promote digital technologies and services on a global platform.

CONCLUSION:

As the online gaming industry continues to grow, understanding its taxation under the GST regime becomes crucial for both service providers and users, as the dynamic nature of the industry and the ever-evolving digital landscape pose unique challenges for GST implementation. Striking a fair balance between tax revenue collections and fostering a vibrant gaming sector requires proactive measures, clear guidelines, and collaborative efforts from governments, gaming companies, and players. By navigating the complexities with innovative solutions and harmonized policies, the online gaming industry and GST can coexist harmoniously, allowing players to continue enjoying immersive gaming experiences while ensuring proper taxation in the digital realm.

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1. Section [2\(17\)](#) (vii) of the Integrated Goods and Services Act, 2017 define the definition of "Online Information and Database access or retrieval services".
 2. SAC Code 9996, "Recreational, Cultural and Sporting Services".

- [3.](#) Section 2 (17) of the Integrated Goods and Services Bill, 2017.
- [4.](#) Writ Petition No. 19570 of 2022, dated 11/05/2023, Para "X" Conclusion.
- [5.](#) Section [13\(12\)](#) of the Integrated Goods and Services Bill, 2017.
- [6.](#) Section [5\(3\)](#) of the IGST Act, 2017 read with the Notification No. 10/2017-I.T. (Rate) dated 28.06.2017 IGST.
- [7.](#) [\[2022\] 138 taxmann.com 282/91 GST 902 \(AAAR – Maharashtra\)](#)
- [8.](#) Maharashtra Authority of Advance Ruling.
- [9.](#) Order no. GST-ARA-06/2019-20/B-58 dated 15-12-2020, Para 3.5(v).
- [10.](#) Section [14](#) of IGST Act, 2017.
- [11.](#) Section [22](#) of CGST Act, 2017 which states the provision related to "Persons liable for registration.
- [12.](#) Agenda for 47th GST meeting (Volume 1), held on 27-28th June, 2022, [gstcouncil.gov.in](#).
- [13.](#) Press Release of GST Council 50TH meeting, held on 11th July, 2023, [gstcouncil.gov.in](#).
- [14.](#) Under heading "Changes in GST Rates (III)" of Press Release of GST Council 50th meeting, held on 11th July, 2023, [gstcouncil.gov.in](#).
- [15.](#) Press Release of GST Council 50TH meeting, held on 11th July, 2023, [gstcouncil.gov.in](#).